138-262

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 417[illegible]

JOHN D. BEARDSLEY, APPELLANT,

vs.

PAUL F. BEARDSLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED SEPTEMBER 27, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 417.

JOHN D. BEARDSLEY, APPELLANT,

vs.

PAUL F. BEARDSLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Exhibit A—Articles of association of the Washington and Hope Tramway Company, filed May 7, 1877	27	18
B—Articles of association of the Washington and Hope Tramway Company, filed June 14, 1877	29	19
C—Amendment of articles of association of Washington and Hope Tramway Company, filed November 7, 1881	33	22
D—Articles of association of the Arkansas and Louisiana Railway Company, filed September 13, 1882	36	24
E—Articles of association of the Arkansas and Indian Territory Railway Company, September 13, 1882	38	26
F—Affidavit of J. D. Beardsley *et al.*	40	27
G—Agreement between the Washington and Hope Railway Company and the Arkansas and Indian Territory Railway Company, September 18, 1882, &c.	41	28
H—Copy of resolution to increase capital stock of Arkansas and Louisiana Railway Company, &c.	46	31
Order postponing hearing on application for receiver and restraining defendant until the hearing	51	34
Order denying motion for receiver, &c.	52	34

JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 30, 1889.

	Original.	Print.
Answer of the Arkansas and Louisiana Railway Company	53	35
Answer of John D. Beardsley	56	37
Exhibit A—Stockholders' meeting, September 18, 1882	72	47
B—Directors' meeting, September 18, 1882	77	51
C—Stockholders' meeting, May 17, 1883	79	52
D—Directors' meeting, May 16, 1883	85	56
E—Agreement of stockholders, May 17, 1883	87	57
E²—Directors' meeting, November 7, 1879	87	58
F—Directors' meeting, March 7, 1882	93	62
G—Directors' meeting, June 29, 1881	94	63
H—Directors' meeting, May 22, 1883	95	63
Order granting John D. Beardsley leave to borrow money, &c.	103	68
Replication to answer of John D. Beardsley	104	69
Replication to answer of the Arkansas and Louisiana Railway Company	105	70
Order granting authority to W. H. Carruth to make settlement with St. Louis, Iron Mountain and Southern Railway Company, &c.	106	71
Agreement to read certain depositions	107	71
Order granting leave to purchase two locomotives on credit	107	71
Decree	108	72
Evidence at the hearing	113	75
Deposition of Paul F. Beardsley	113	75
Exhibit A—Argreement of J. D. Beardsley, January 1, 1882	129	86
B—Letter of J. D. Beardsley to Paul, October 8, 1881	130	86
C—Letter of J. D. Beardsley to Paul, October 24, 1881	130	87
D—Letter of J. D. Beardsley to Paul, February 7, 1886	132	88
Deposition of W. H. Carruth	137	91
Edgar Holman	145	96
Rufus H. Bomar	148	99
William Bomar	149	100
William Bomar	151	101
J. M. Simms	152	102
John H. Burt	154	103
Henry B. Hohman	156	104
Jesse Carroway	159	106
W. P. Hart	160	108
J. G. W. Yowell	164	110
Geo. L. Rector	167	112
John H. Bell	169	113
Exhibit A (Yowell)—Agreement of citizens of Nashville, April 30, 1883	170	114
B (Yowell)—Subscription list	171	115
C (Yowell)—Subscription list	172	116
A (Rector)—Warranty deed from W. C. Sypert *et ux.* to J. D. Beardsley, Jan. 11, 1884	174	117
A (Bell)—Deed from Washington and Hope Railway Company to John H. Bell, September 14, 1882	176	117
Stipulation as to foregoing depositions	177	117
Notary's certificate	178	118

	Original.	Print.
Deposition of J. D. Beardsley	179	118
J. D. Beardsley (second)	192	128
Exhibit A (Beardsley)—Agreement between Beardsley *et al.* and St. Louis, Iron Mountain and Southern Railway Company, June 11, 1885	237	157
B (Beardsley)—Certificate of construction, January 31, 1884	244	161
C (Beardsley)—Resolution of board directors, February 2, 1884	245	162
D (Beardsley)—Order of Beardsley for bonds, February 7, 1884	247	163
F (Beardsley)—Letter of P. F. Beardsley to "Dear Major," January 16, 1886	248	163
G (Beardsley)—Letter of P. F. Beardsley to "Dear Major," February 1, 1886	251	165
R (Beardsley)—Vouchers	255	168
Deposition of H. H. Wheless	284	197
W. H. Carruth	316	217
Exhibit A (Wheless)—Letter-head	322	222
Exhibit 10—Account of Arkansas and Louisiana Railway Company with St. Louis, Iron Mountain and Southern Railway Company	323	222
Deposition of R. B. Williams	327	224
Exhibit A (Williams)—Meeting of board directors, March 7, 1882	337	230
B (Williams)—Deed between Washington and Hope Railway Company *et al.* and St. Louis Bolt and Iron Company, June 11, 1880	338	231
C (Williams)—Deed between Arkansas and Indian Territory Railroad Company and Mercantile Trust Company, November 1, 1882	341	233
D (Williams)—Deed between Arkansas and Louisiana Railway Company and Mercantile Trust Company, July 2, 1883	352	240
E (Williams)—Meeting of board of directors, Feb. 5, 1884	364	249
Deposition of R. S. Hayes	366	250
J. W. Teeters	373	254
Edward Alexander	375	256
Vinton Alderman	378	258
Opinion of Judge Caldwell	386	263
Order setting aside decree as to amount due defendant and referring cause to master	400	272
Petition of Arkansas and Louisiana Railway Company as to conveyance of property	401	273
Report of master	402	273
Exhibit A—Deposition of Vinton Alderman	409	278
B—Account of Beardsleys	412	280
C—Letter of general auditor Baltimore and Ohio Railroad Company, November 29, 1886	413	280
D—Account of Beardsleys	413	280
E—Deposition of W. H. Carruth	414	281
H. H. Wheless	417	283
John D. Beardsley	420	285

	Original.	Print.
Exhibit B (Beardsley)—Account of P. F. Beardsley with Arkansas and Louisiana Railway Company	427	289
Exhibit A (Wheless)—Account of J. D. Beardsley with Arkansas and Louisiana Railway Company	427	290
Exceptions of defendant Beardsley to master's report	433	294
Exceptions of defendant railway company to master's report	435	295
Motion to strike certain depositions from files	436	296
Order granting leave to complainant to file exceptions, &c	437	296
Exceptions of complainant to master's report	438	297
Final decree	440	298
Order allowing appeal	442	300
Bond	442	300
Clerk's certificate	447	303

1 Be it remembered that on the 11th day of March, 1886, came into the office of the clerk of the circuit court of the United States for the eastern district of Arkansas Paul F. Beardsley, by Jones & Martin, Esqs., his solicitors, and filed therein his bill of complaint, on the chancery side of said court, against John D. Beardsley and the Arkansas and Louisiana Railway Company; which bill of complaint is is the words and figures following, to wit:

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

In the Circuit Court.

PAUL F. BEARDSLEY, Complainant,
v.
JOHN D. BEARDSLEY and ARKANSAS AND LOUISIANA RAILWAY COMPANY, Defendants. } Bill.

To the honorable the judges of the circuit court of the United States for the eastern district of Arkansas:

Your orator, Paul F. Beardsley, complains of the defendants, John D. Beardsley and the Arkansas and Louisiana Railway Company, and states that your orator is a citizen of the State of Tennessee, and the defendant, John D. Beardsley, is an alien and a subject of the Kingdom of Great Britain, and now a resident of the county of Hempstead, in the State of Arkansas, and the defendant, Arkansas and Louisiana Railway Company, is a corporation
2 organized under the laws of the State of Arkansas and located in part in the eastern district thereof, with its principal office in the town of Washington, in the county of Hempstead aforesaid.

Your orator further states that the defendant, Arkansas and Louisiana Railway, was organized in the following manner—that is to say: On the 11th day of April, A. D. 1877, certain citizens of the said town of Washington organized the Washington and Hope Tramway Company under the general laws of the State of Arkansas regulating the formation and government of private corporations, and on the 7th day of May, 1877, filed their articles of association in the office of the secretary of state of the State of Arkansas, which, among other things, provided that the capital stock of said corporation should be twenty thousand dollars, divided into shares of twenty-five dollars each; that said tramway should commence at said town of Washington and end at the town of Hope, in the same county, a distance of between nine and ten miles, and that the incorporators, their successors and assigns, reserved the privilege, whenever the same should be deemed advisable and expedient by a majority in interest of the stockholders, to change the tramway into a railroad corporation in accordance with the laws of the State; said articles of association were duly recorded by said secretary of

state in a book provided by law for that purpose, and a true copy thereof is herewith filed, marked Exhibit "A," and prayed to be taken and considered a part of this bill.

On the 31st day of May, 1877, all of the stockholders of said tramway company, deeming it advisable and expedient so to do, changed said tramway company into a railroad corporation in conformity with the laws of said State, and together with other citizens of said town of Washington entered into articles of association for the organization of the Washington and Hope Railway Company, which, among other things, provided that the capital stock of said corporation should be forty-five thousand dollars divided,
3 into shares of twenty-five dollars each, and that said railroad should be commenced at said town of Washington and run thence to said town of Hope; and on the 11th day of June, 1877, three of the directors of said corporation made an affidavit that at least one thousand dollars for every mile of the road described in said articles of association had been subscribed, and that five per cent. on the amount subscribed had been actually paid unto the directors named in said articles, which affidavit was attached to said articles of association and with them filed with said secretary of state on the 14th day of June, 1877; said articles of association and said affidavit were duly recorded together by said secretary of state in a book provided by law for that purpose, and a true copy thereof is herewith filed, marked Exhibit "B," and prayed to be taken and considered as a part of this bill.

On the 7th day of November, 1881, an amendment to the articles of association of the Washington and Hope Railway Company was filed in the office of said secretary of state, by which said road was extended from said town of Washington in a northwesterly direction to the line of the Indian Territory, and from said town of Hope in a southeasterly direction to the line of the State of Louisiana; the name of the corporation was changed from Washington and Hope Railway Company to the Arkansas and Louisiana Railway Company, but it was expressly provided that "the present organization of the Washington and Hope Railway Company shall continue, and the change of name and extension of the road shall not be held to make any change in the organization, time of election, the by-laws or obligations of the Washington and Hope Railway Company." The capital stock was increased to one million dollars, divided into shares of twenty-five dollars each; the stock of the Washington and Hope Railway Company to be stock of this company and the holders thereof to vote it as such, and at their option to exchange it for stock under the new name in like amounts. Such amendment was
4 duly recorded by said secretary of state in a book provided by law for that purpose, and a true copy is herewith filed, marked Exhibit "C," and prayed to be taken and considered as a part of this bill; but said organization was never perfected so as to become a corporation under the laws of Arkansas, but was subsequently abandoned. On the 13th day of September, 1882, articles of association of the Arkansas and Louisiana Railway Company were filed in the office of said secretary of state, which, among other

things, provided that the road should commence at said town of Hope and run in a southeasterly direction through certain counties therein named to the line of the State of Louisiana, and that the capital stock should be one million and two hundred thousand dollars, divided into shares of one hundred dollars each, in which corporation your orator held two hundred shares and the defendant, John D. Beardsley, four hundred shares, as shown by said articles. Said articles of association were duly recorded by said secretary of state in a book provided by law for that purpose, and a true copy thereof is herewith filed, marked Exhibit "D," and prayed to be taken and considered as a part of this bill.

On the same day and by the same persons articles of association of the Arkansas and Indian Territory Railway Company were filed in the same office, which, among other things, provided that said road should commence at the line between the State of Arkansas and the Indian Territory, in the county of Sevier or the county of Polk, as might be found best on a survey of the line; thence in a southeasterly direction to or near the town of Washington, and terminate at a junction of the Washington and Hope railway, then in operation, and that the capital stock should be one million dollars, divided into shares of one hundred dollars each, in which corporation your orator held two hundred shares and the defendant, John D., four hundred shares, as shown by said articles. Said articles of association were duly recorded by said secretary of state in a book provided by law for that purpose, and a true copy thereof is herewith filed, marked Exhibit "E," and prayed to be taken and considered as a part of this bill.

On the 18th day of September, 1882, an affidavit was made by three of the directors of the Arkansas and Indian Territory Railway Company that at least one thousand dollars for every mile of said road had been subscribed, and that five per cent. on the amount subscribed to the articles of association had been actually paid unto the directors named in said articles, which affidavit was filed in the office of said secretary of state on the 20th day of September, 1882, and by him recorded in a book provided by law for that purpose, a true copy of which is herewith filed, marked Exhibit "F," and prayed to be taken and considered as a part of this bill.

On the 18th day of September, 1882, the Washington and Hope railway, with all the property of every kind, nature, character, and description, were sold to, purchased by, and completely merged in the Arkansas and Indian Territory Railway Company, which sale was duly ratified by the stockholders of the said Washington and Hope railway. A duly authenticated certificate of such sale and purchase was filed and recorded in the office of the clerk of the circuit court and *ex officio* recorder for said Hempstead county on the 3rd day of January, 1883, and on the 12th day of January, 1883, was filed in the office of the secretary of state, and by him duly recorded in a book provided by law for that purpose, a true copy whereof is herewith filed, marked Exhibit "B," and prayed to be taken and considered as a part of this bill.

On the 1st day of March, 1883, three of the directors of the Ar-

kansas and Louisiana Railway Company made affidavit that at least one thousand dollars for each mile of said road described in the articles of association and intended to be built had been subscribed, and that five per cent. on the amount so subscribed had been actually paid unto the directors named in said articles. On the
6 17th day of June, 1883, the Arkansas and Indian Territory railway, together with all its property of every kind, nature, character, and description, including all the property purchased by it from the Washington and Hope railway as aforesaid, was sold to, purchased by, and completely merged in the Arkansas and Louisiana Railway Company, which sale and purchase were duly ratified by the stockholders of both corporations.

On the 12th day of June, 1883, the capital stock of the Arkansas and Louisiana Railway Company was increased from one million and two hundred thousand dollars to two million and four hundred thousand dollars, which affidavit of the directors and certificates of such sale and purchase and of said increase of stock were filed together in said office of said secretary of state on the 25th day of June, 1883, and by him duly recorded in a book provided by law for that purpose, and a true copy thereof is herewith filed, marked Exhibit "H," and prayed to be taken and considered as a part of this bill.

Your orator further states that the General Assembly of the State of Arkansas passed an act, which was approved by the Governor of said State, on the 5th day of March, A. D. 1879, entitled "An act to donate certain land to the Washington and Hope Railway Company," in and by which all lands lying in the county of Hempstead aforesaid which had been forfeited to the State for non-payment of taxes and not redeemed according to law, and also all such lands as might be so forfeited within five years of the passage of said act and not redeemed according to law, and also all swamp and overflowed lands in said county which had been or might afterward be confirmed to the State which had not been sold or conveyed by the State, were donated to said Washington and Hope railway upon condition that said railway should be completed in good running order from Washington to Hope within five years next after the passage of said act; and it was by said act made the duty of the Governor of said State to execute deeds to said company upon compliance with said condition; and your orator states that said
7 railway company realized from said donation about twenty thousand acres of land for which said Governor executed deeds as aforesaid.

Your orator further states that after the passage of said act the stockholders of said Washington and Hope railway commenced active operation thereon, and progressed so far in their work of constructing a narrow-gauge railroad as to clear out the right of way along the entire line and grade the greater part of the road-bed between said towns of Washington and Hope, when negotiations were entered into between said corporation and the defendant, John D., acting for himself and one Vinton Alderman, by which said corporation agreed to transfer and assign to said defendant all the property of said corporation, including the lands granted by the

aforementioned act of the Legislature, and also give him a bonus of of ten thousand dollars in the promissory notes of said stockholders and other citizens of said county of Hempstead, upon the condition that said defendant should complete said road and operate it under the laws of the State. These negotiations were consummated during the year 1879, and the said defendant and the said Vinton Alderman became the absolute owners of said Washington and Hope railway, as tenants in common, with equal interests, and commenced their work of constructing the same as a narrow-gauge railroad. Your orator cannot exhibit a copy of the agreement entered into between said corporation and the defendant, John D., for the reasons to be hereinafter stated.

Your orator further states that the said defendant, John D., and the said Vinton Alderman proceeded under great difficulties, for lack of means, with their work of constructing said narrow-gauge railroad, by using for a while wooden stringers for rails for a part of the road and iron rails for the remainder, but afterwards securing all iron for rails, until the latter part of the year 1881, when the said Alderman became desirous of disposing of his one-half interest therein. At that time your orator was a citizen of the State
8 of California, where he received letters from the defendant, John D., who is his older brother of the full blood, urging him to come and take an interest in said railroad enterprise, as he had frequently done before that time and before his connection with said Alderman. Upon these solicitations your orator went to said town of Washington and ascertained that said Alderman's interest in said corporation could be purchased for about ten thousand dollars in cash; but, not possessing that amount of money, he went to the city of New York, at the suggestion and solicitation of his said brother, and there attempted to secure a loan of that sum for the purpose of making such purchase. In this he failed, and returned to the town of Washington about November 1st, 1881, and agreed with his said brother to work for said corporation for seventy-five dollars per month for a short while, until he could make more satisfactory arrangements. Within a week or two after returning he and his said brother ascertained from said Alderman, who was then in the State of West Virginia, that he would dispose of his one-half interest in said railway for twelve thousand dollars upon a credit, and thereupon your orator and his said brother, the defendant, John D., agreed together that said defendant should write to said Alderman and accept his terms of sale, your orator insisting upon taking the whole of said Alderman's interest for the sum of twelve thousand dollars as aforesaid, to the end that said railway with all its property should become the joint property of your orator and said defendant, share and share alike, but they agreed that your orator should have only two-thirds of said interest, which would then make your orator's interest in said property one-third of the whole whereof, and to this your orator finally consented. After this agreement the said defendant wrote said Alderman, saying that he would take his interest in said railway and its property for said sum of money, and in due course of mail received

a reply from said Alderman saying that he would consider his said interest sold to him. At that time neither your
9 orator nor defendant, John D., had any money of any consequence, and on that account they were compelled to proceed with their work under great difficulties. The road was operated as far as completed, and all of its proceeds were employed in the payment of its debts and for repairs, both your orator and said defendant giving their individual labor with the common laborers employed by them and using the most rigid economy compatible with existence. Soon after this purchase from said Alderman, no part of which had then been paid, and on the 1st day of January, 1882, the defendant, John D., handed your orator a paper-writing, which is in exact words and figures, following:

"W. H. Carruth, president. J. D. Beardsley, superintendent.

SUPERINTENDENT'S OFFICE,
WASHINGTON AND HOPE RAILWAY COMPANY,
WASHINGTON, ARK., *Jan. 1st*, 1882.

Memorandum.

I hold of the stock of the Washington and Hope Railway Company thirty-three thousand two hundred and fifty dollars, in thirteen hundred and fifty shares, which is sold to Paul F. Beardsley, and which, though standing in my name, belongs to him, subject to a payment of eight thousand dollars, with interest at same rate and from same date as interest on my purchase of Mr. Alderman's stock.

J. D. BEARDSLEY.

Witness:
J. H. BURT."

Said paper-writing, except the printed heading and the name J. H. Burt, is in the genuine handwriting of the said defendant, John D., and is held by your orator for greater security against loss or destruction, but subject to inspection by the court and parties.
10 Your orator, having implicit confidence in the honesty of purpose and sincerity of motive of his said brother, accepted the said memorandum of evidence of his share and went heartily, earnestly, and untiringly to work to make the enterprise a success, and, although said memorandum states that thirteen hundred and fifty shares of the stock were sold to your orator, still he is willing to admit that this was a mistake in calculation made by his said brother, and that it was intended to be only thirteen hundred and thirty-three and one-third shares, that being one third of all the stock. At the same time, in making this admission, he calls attention to the further mistake in said memorandum as to the value of said shares, which should be thirty-three thousand three hundred and thirty-three and one-third dollars instead of thirty-three thousand two hundred and fifty dollars, and he had all the while and does now treat said memorandum as if thus reformed, to the end that it shall conform to the true intention of the parties and prop-

erly express the contract as entered into between his said brother and himself.

Your orator further states that some time before the transactions last above stated the stock of the said Washington and Hope Railway Company had been increased from forty-five thousand dollars to one hundred thousand dollars, divided into shares of twenty-five dollars each, in all four thousand shares, but at what time this was done he is unable to state, for the reasons to be hereinafter given.

Your orator further states that the said defendant, John D., and your orator worked together harmoniously and in full confidence with each other, consulting together in all matters pertaining to their said railway enterprise without reserve, and succeeded in completing a first-class narrow-gauge all-iron rail railroad in full operation between said towns of Washington and Hope, with all necessary switches, side tracks, turnouts, engine, rolling stock, and other appurtenances, including a depot building and platforms at the town of Washington and proper accommodations for receiving and landing passengers and freight at the
11 town of Hope, it being well understood and agreed both by your orator and said defendant that your orator's interest in all of said property was one-third thereof and said defendant's was two-thirds thereof, the interest of the president and other directors of said corporation being merely nominal and only for the purpose of sustaining the corporate existence under the laws of Arkansas.

Being in this condition and owing but a small debt, your orator and his said brother, the defendant, John D., after full consultation and agreement, concluded to change the gauge of their said railway and make it uniform with the gauge of the St. Louis, Iron Mountain and Southern Railway, with which it made connection at said town of Hope, and to extend the line of said road, provided they could make the necessary arrangements for money to carry out their plans and for freight rates with said last-named corporation. Such arrangements were soon thereafter made and work of changing said gauge commenced. Soon after this the said defendant, John D., acting for himself and your orator, entered into a construction contract with the board of directors of said defendant railway, the terms and conditions of which your orator cannot give with any degree of accuracy, for the reason to be hereinafter stated, except to say that said board of directors, having, with the exception of your orator, as hereinbefore stated, nothing more than a merely nominal interest in said corporation, were willing to and did make and ratify any and everything proposed by said defendant, John D., concerning the construction, operation, and management of said defendant railway; and your orator, having intrusted such matters to said defendant, his said brother, and reposing the utmost confidence in his judgment, integrity, and good faith, did not even read said construction contract, as he now remembers, but joined with the other members of said board of directors (if indeed he were then a director at that time) in ratifying the same, being instigated to do all things which his said brother might have suggested in these matters by
12 his implicit confidence and his full belief that it was for the

mutual benefit of his said brother and himself according to their respective interests as aforesaid.

Your orator cannot file or exhibit a copy of the proceedings of said board of directors nor of said construction contract, for the reasons to be hereinafter stated, but he charges the truth to be that in all these matters, as well as in all other matters pertaining to said railway and its properties, that the defendant acted for himself and as trustee for your orator without any change whatever of their respective rights or interests therein; that said defendant was and is, as before stated, your orator's older brother, of the full blood, and your orator had no reason to believe that his said brother would abuse his trust or act otherwise than with the utmost good faith with him; that fully imbued with this confidence, he did not exact or even request from his said brother any other writing or evidence of his interest in said railway and its properties, either present or prospective, or in said construction contract, nor was any modification or change of any kind whatever of their respective rights or interests therein, as they have hereinbefore been stated to be, either made or suggested to be made either by your orator or his said brother, and that although he has diligently ransacked his brain for the purpose, in view of the subsequently occurring transactions, to be hereinafter stated, he can recall nothing, either of word or act of his own, which might be construed into a relinquishment of any part of a full one-third interest in said railway, in all of its stock, and in all of its property of every kind and in said construction contract, subject only to the payment of its debts and whatever your orator may be owing individually upon his said Alderman purchase, as will be hereinafter more particularly stated.

Your orator further states that after said construction contract was made there was no change whatever in the relations existing before that time between his said brother and himself, but each gave his time, labor, and skill, as well as all the assets which came from the Washington and Hope railway, to the enterprise the same as before.

13 And your orator further states that during the month of November, 1883, they had succeeded in changing the gauge of said railway as contemplated for the whole distance between said towns of Washington and Hope. In the meantime they had commenced upon the construction of the road from the town of Washington to the town of Nashville, in Howard county, Arkansas, and on the 4th day of October, 1884, completed it, and have been since that time running trains thereon, so that said railway now extends the whole distance from said town of Hope by way of Washington to said town of Nashville, a distance of about twenty-six miles, and is a first-class standard-gauge road for both passengers and freight, with all necessary switches, side tracks, turnouts, depot buildings, platforms, &c.

In these four years during which your orator has been connected with this enterprise he has given his entire time, day by day and considerable portions of many nights, to the work upon the road and in its interests. He is a good locomotive engineer and a good

machinist. He has great physical strength and as much endurance as any man with whom he has ever met. He has not confined himself to any one branch of the business, but has laid ties and rails, built bridges, worked in the mud and water with the common laborers, in rain and snow and storm as in sunshine, not ceasing his labors because of the weather or the night-fall, but continuing them until the end in view was accomplished without regard to the elements, the seasons, or the hours for refreshment and repose. In addition to all this he superintended the entire construction and operating of said road, and nothing was done thereon without his supervision and control. He has acted as engineer when necessary, and it was often necessary, & has frequently spent the whole night upon his engine and then worked unceasingly all the next day and regularly thereafter. He has gone into the machine shop of the road and repaired the engines and done any other work to save expense or meet an emergency. He has repaired cars as well as engines, and in fact there is nothing upon this whole line of road that
14 has been done without his having taken a part in it. There is scarcely a piece of timber, whether of bridge or trestle or cross-tie, and scarcely a piece of iron, whether of rail or fish-plate or spike, from Hope to Nashville that has not been handled by him in one way or another or has felt the sweat from his brow or his hands. All these things has he done, and more, and during all these years he has taken from the revenues of the road not one dollar more than would actually suffice for the bare necessities of life for himself, his wife, and his little children, rarely exceeding in any one month more than one hundred dollars and oftener a much less amount. All these things has he done, and more, for the purpose of accumulating a fortune for himself and family by honest and honorable industry and without one fear that his hopes were to be thwarted by the unworthy conduct of his said older brother, as will be hereinafter particularly stated. Your orator further states that when your orator made his said purchase of the Alderman interest the said defendant, John D., had assumed the title of "superintendent" of said railway and gave your orator the title of "assistant superintendent" thereof; but about the month of December, 1885, said defendant arbitrarily assumed the title of "lessee and general manager" and gave your orator the title of "master of transportation," having before that time or about the month of December, 1883, arbitrarily fixed his own salary at two hundred dollars per month and that of your orator at one hundred dollars per month.

Your orator did not assent to this arrangement of salaries, but protested against it for the reason that he believed the amounts ought to have been reversed so as to have given your orator double the amount which said defendant should have had if they were to be proportioned to the amount of labor and skill devoted by each, or at least an equal amount; but your orator took no active steps beyond protesting and objecting against this arrangement at the time for the reason that he did not wish to create any ill feeling between his said brother and himself, and because he believed that

the matter would be satisfactorily adjusted between them
15 when the work of constructing the said railway to its terminal points should be concluded, and for the further reason that he recognized the fact that the road needed all its money for construction and to meet its liabilities, and he was willing to use the utmost frugality in his personal and domestic expenditures to accomplish these ends; but your orator did not conceive that his said brother was then paving the way to oust him of his title to his said property or to claim that your orator's relation to said railway was merely an employee for wages and nothing more. Such, however, was the fact.

During the month of January, 1886, in the course of a private correspondence between your orator and his said brother in relation to a misunderstanding between them regarding domestic matters, your orator was informed by said defendant that he did not recognize your orator as a party in interest in said corporation, but merely as an employee for wages, and that he as sole lessee and general manager of said railway considered his own powers over said corporation to be supreme, and that he could do with it just as it should suit his own pleasure to do without regard to your orator's wishes or claims of interest in the matter. To this your orator seriously demurred and expressed his astonishment at such an assumption on the part of his said brother, in whom he had reposed such trust and confidence; but after a lengthened correspondence and repeated efforts on the part of your orator to adjust the matter without resort to the courts he received a letter from Mr. H. H. Wheless, the auditor of the defendant railway, which is in words and figures following:

"J. D. Beardsley, lessee and general manager; W. H. Carruth, treasurer; P. F. Beardsley, master of transportation; H. H. Wheless, auditor.

ARKANSAS AND LOUISIANA RAILWAY,
AUDITOR'S OFFICE,
16 WASHINGTON, ARK., *February 15th*, 1886.

P. F. Beardsley, Esq., master of transportation, Nashville.

DEAR SIR: The general manager requests me to say to you that from this date your services will not be required. Voucher will be made you for entire month—February—but it will not be necessary for you to complete the unexpired time covered by this. He requests me to receive from you all tools, material, papers, &c., in your possession belonging to the Arkansas and Louisiana railway; also your passes, keys to offices, desk, &c.

Respectfully yours, H. H. WHELESS, *Auditor*."

The original of this letter your orator holds in his possession for greater security against loss or destruction, but subject to the inspection of the court and parties. The same demand was made by the defendant, John D., in person, and your orator refused compliance with it, as well as that of said auditor.

Your orator further states that, finding all overtures upon his part for an amicable adjustment to be futile, and them and himself treated with contempt by his said brother, the defendant, John D., he found a resort to the courts to be indispensable for the security and protection of his rights, and, upon the advice of his counsel, applied to said auditor of the defendant railway for a statement of the financial condition of said railway, as the same appears by the books kept by him, to the end that he might use such statement in this suit. This was refused by said auditor for the reason given by him, that he was instructed by the defendant, John D., not only not to give your orator any statement from said books, but under no circumstances whatever to permit your orator to inspect or look into said books. Your orator then, under
17 the further advice of his counsel, applied to the secretary of the board of directors of the defendant railway for permission to examine the books of the corporation for the purpose of obtaining therefrom information deemed by his said counsel to be necessary for use in bringing this suit. This was refused by said secretary for the reasons given by him, that he was instructed by the defendant, John D., not only not to give your orator any statement from said books, but under no circumstances whatever to permit your orator to inspect or look into said books. Your orator reminded said secretary that your orator was and is a stockholder in said corporation as well as a director therein, and as such was entitled to inspect said books, and that it is made a cause for forfeiture of the charter of said corporation under the laws of the State of Arkansas for him to refuse this permission to examine said books; but said secretary still refused such permission, or to furnish your orator any information whatever from said books; and your orator charges the truth to be that said secretary is one of the attorneys for said defendant, John D., and in thus refusing a privilege belonging of right and under the law to your orator he acted under the direction of said defendant. In consequence of this conduct on the part of said auditor and said secretary, who were acting under the direction of the defendant, John D., as aforesaid, your orator has been unable to make exhibits, or even positively accurate statements, of many things deemed by his counsel to be proper and necessary to the correct understanding of your orator's rights and the defendants' liabilities in the premises.

Your orator further states that, after entering into the contract of purchase of two-thirds of the Alderman interest in the Washington and Hope railway, on the 1st day of January, 1882, as aforesaid, your orator and the defendant, John D., having full confidence in the honesty, integrity, and good faith of each other, having no books of account as between themselves, but each took from the revenues of the business from time to time whatever was necessary for the actual wants of himself and family and no more; but in
18 January, 1884, they concluded to employ an auditor and keep accurate accounts of all the affairs of the defendant railway, which has been done since that and is still done. Your orator, as before stated, has been refused access to said books and is unable for

that reason to state many transactions of a financial nature which appear upon said books, but from his recollection and from memoranda made by him while having access to said books, and from information obtained from said auditor before he was prohibited from giving information, he is able to make the following statement, which he charges to be true: The total credit given to said Vinton Alderman upon said books for his one-half interest in the Washington and Hope railway is $12,000, twelve thousand dollars, and the total amount charged to him as having been paid by said defendant railway amounts to forty-eight hundred dollars ($4,800), which was paid from time to time and before the 13th day of February, 1886, and entirely out of the earnings and profits of said defendant railway, and after your orator's said purchase was made; and there also appears upon said books a credit to the defendant, John D., in the sum of forty-seven hundred and thirty-two dollars and fifty cents ($4,732,50) as the proceeds of the sale of a part of the iron, fish-plates, spikes, and cars, which were of the property of the Washington and Hope railway and belonged to the same at the time and after your orator's said purchase of his interest therein as aforesaid. And your orator charges that said credit should not have been made to the defendant, John D., but that said sum belonged of right to the defendant railway, and he further charges that said sum was used by the defendant, John D., for his own private purposes and without the knowledge or consent of your orator, and was a wrongful conversion of the trust funds in his hands; and there also appears upon said books a statement of the purchase of two thousand fire-brick for the use of the defendant railway, and which were charged as such, but your orator states that a large number of said bricks, at least one-half of them, were used by the defendant, John D., for his own private purposes and no charge to himself has been made upon said books, and that said bricks were worth
19 and readily sold for eight cents each. And your orator further states that said defendant, John D., used of the earnings and profits of said defendant railway from time to time large sums of money for travelling expenses for himself and family and the education of his children abroad and other matters not appertaining to the business or affairs of the defendant railway, but he cannot say what amounts were used for these purposes, nor whether proper charges were made upon said books against said defendant, John D., for them; and in fact your orator has no way, except through this honorable court, of ascertaining the condition of the affairs of said railway and the value of his interest therein, on account of the arbitrary powers which the defendant, John D., is exercising over the officers of said railway and over the entire business and properties thereof, in utter contempt and disregard of your orator's rights and demands.

Your orator further states that the defendant, John D., during the year 1884, used of the earnings and profits of the defendant railway a considerable amount of money in building a residence upon lots and a piece of land in said town of Washington, which he claims to be his private property, and he is now engaged in building consider-

able additions to said residence, and is using the same for his private use and account, and for this, as your orator is informed and believes and so states, has made no proper charge against himself upon the books of the defendant railway. Your orator further states that the assets of the Washington and Hope railway at the time your orator purchased his interest therein as aforesaid, and which were afterwards sold to the Arkansas and Indian Territory railway, and by the Arkansas and Indian Territory railway to the defendant railway, as hereinbefore stated, were, according to your orator's recollection and belief, as follows:

Amount due from bonus notes since collected, about	$6,000 00
Amount since realized from sale of iron, fish-plates, spikes, bolts, and cars, about	14,000 00
Amount since realized from sale of lands granted by State as aforesaid, about	8,000 00
Amount of net earnings of narrow-gauge railway for year 1882, about	8,000 00

And your orator states that all of said assets, as well as all of the assets, earnings, and profits since then realized by the defendant railway corporation, except those wrongfully converted by the defendant, John D., as aforesaid, have been used in the construction of the defendant railway as it now exists, and for the payment of its debts and expenses.

Your orator further states that the net earnings of the defendant railway for the year 1885, as your orator was informed by the auditor thereof before the issuance to him of the arbitrary order of the defendant, John D., as aforesaid, amounted to the sum of thirty-four thousand four hundred and twenty-nine dollars and eighty-eight cents ($34,429.88), but your orator is unable to state the earnings for any other year for the reason before given, that he is not permitted to look into the books of said defendant, and can obtain no further information therefrom, as before stated. Your orator further states that certain citizens of the county of Howard, in the State of Arkansas, donated to the defendant railway about three hundred and twenty acres of land, situate at and contiguous to the town of Nashville, in said county, upon condition that said defendant railway should be extended to said town, and a depot located on the said land. This has been done, and the deeds to said lands have — executed and delivered to said defendant, John D., in his own individual name; but your orator states and charges the truth to be that said defendant received such title in trust for himself and your orator, according to their respective interests in the defendant railway, and not otherwise, and that said lands belong of right and in equity to said defendant railway. And your orator further states that many valuable improvements, including depot buildings, &c., and a large and commodious hotel, have been built upon said lands; that a large portion of said lands have been divided into blocks and lots, now forming a part of said town
21 of Nashville, and a portion of them sold by the defendant, John D., or bargained for sale (but what portion your orator

is unable to say), and that all of said lands remaining unsold and the proceeds of those portions which have been sold or bargained for sale are properly and equitably assets of the defendant railway. Said lands are described as follows: The N. W. ¼ of the N. W. ¼; the N. E. ¼ of N. W. ¼; the S. E ¼ of the N. W. ¼; the N. W. ¼ of the N. E. ¼; the N. E. ¼ of the N. E. ¼; the S. W. ¼ of the N. E. ¼; the S. E. ¼ of the N. E. ¼, in section 26, in township nine (9) south, in range 27 west, being the land known as the Rector place, exclusive of the lots sold previous to August 30th, 1883, out of the northeast quarter of the southwest quarter and the north half of the northeast quarter, as per deeds made by A. M. Rector of said Jan'y 21st, 1885.

And your orator further states that there are other lands belonging to said defendant railway, the deeds to which are in the name of the defendant, John D., but your orator cannot specifically describe and set forth the same for the reason before given, that he is denied access to the books of the defendant railway by the defendant, John D.

And your orator further states that the defendant, John D., heretofore made a contract with the Pan Electric Telephone Company, by which he has the exclusive right to the use of the instruments of the said telephone company along the line of the defendant railway in the States of Arkansas and Louisiana; but your orator charges the truth to be that said contract was made for the benefit of the defendant railway, though standing as the contract of the defendant, John D., with said telephone company.

Your orator is unable to state the terms and conditions of said contract otherwise than that it is largely beneficial to your orator, and the defendant, John D., for the reason before given, that he is denied access to the books of the defendant railway by the defendant, John D., as aforesaid. And your orator further states that there are many other things affecting his rights in said railway, but which he is
22 unable to state in any satisfactory manner for the reason before given, that he is denied access to the books of the defendant railway by the defendant, John D., as aforesaid. Your orator further states that some time before his said purchase of two-thirds of the Alderman interest in the said Washington and Hope railway, and after the said Alderman and the defendant, John D., became the owners thereof, the capital stock of said railway had been increased from forty-five thousand dollars to one hundred thousand dollars, divided into shares of twenty-five dollars each, making in all four thousand shares, as he has hereinbefore stated, and that such was the capital stock of said corporation when your orator made such purchase; but your orator is unable to state when this increase was made, inasmuch as he fails to find any record thereof in the office of said secretary of state, and he is denied access to the books of said corporation (in which the same is recorded) by the secretary thereof, who has the same in his keeping and who is acting under the commands of the defendant, John D., as aforesaid. Your orator further states that said four thousand shares of stock were all issued in the name of the defendant, John D., if in fact issued at all, who held them in trust for himself and said Al-

derman, and afterwards held them in trust for himself and your orator, when your orator made his said purchase; but your orator cannot positively say whether certificates of said stock or of any other stock were in fact issued, because of the fact that he cannot have access to the books of said corporation, wherein the proceedings in relation thereto are recorded; but your orator charges the truth to be that the said defendant, John D., in all transactions connected with this business, was the active agent and trustee, first of the said Alderman and afterwards of your orator, and that the directors of said corporation herein named, commencing with the Washington and Hope railway and ending with the defendant railway, recognized the defendant, John B., after he became interested as aforesaid, as the owner of all the properties of said corporation, for himself and as trustee, first for
23 said Alderman and afterwards for your orator, with full powers to act in the premises as he might deem advisable for the welfare of the corporation; that the shares of stock appearing upon the books to belong to all of the directors, except your orator, were merely nominal, and were of no value to them except for the purpose of sustaining the corporate existence of the corporation aforesaid; that such proceedings were had by such directors from time to time as the defendant, John D., suggested were for the interests he represented, and that the various meetings of said directors were called and held upon request of defendant, John D., and at no time without such request. And your orator further states that he became a director in the defendant railway because of the request of the defendant, John D., and without questioning his motive, and voted and acted as such director just as said defendant requested him to do, and without inquiring as to the reasons for so doing.

This your orator did because of his perfect confidence in the honesty, integrity, good faith, and good judgment of his said brother, the defendant, John D., who is seven years older than your orator, and for whom your orator had always since his earliest childhood entertained the tenderest feelings of brotherly love, respect, and confidence.

Your orator in fact says and charges the truth to be that, although he is a director of said defendant railway and also a stockholder, owning one-third of all the properties of said railway, he is not permitted to look into nor inspect the books of said corporation; that his rights and interests in said corporation are denied, and he is arbitrarily ordered by the defendant, John D., to keep away from the property of said railway; that the defendant, John D., is converting the trust reposed in him as aforesaid by your orator to your orator's financial ruin; denies that your orator has any interest whatever in the defendant railway or in any of its properties, and, as your orator is informed and believes and so charges, boasts that he is in possession and that he will use the means in his hands to maintain
24 his position, and that your orator is unable to maintain a suit against him for want of means to employ counsel and defray the expenses necessary for that purpose, and has gone so far as to demand from your orator all which your orator has received

from other railroads, and, on account of your orator's refusal to comply with this demand, has threatened to take such action as would induce said railroads to withdraw said passes from your orator, and has caused the conductor on the defendant railway's train to demand and collect fare from your orator for a nurse in charge of your orator's infant child while going with your orator's wife on the train of said railway from Nashville to Washington. And your orator charges that said defendant, John D., by virtue of the power and authority which has been given to him by the directors of the defendant railway, and which they are powerless to withdraw or abridge, will be able to and will maintain his said wrongful and unrighteous position, and will be able to and will destroy your orator's interest in the defendant railway and render the same valueless, unless prevented from so doing by the powers inherent in and exercisable by this honorable court.

Wherefore, in consideration of the premises, your orator prays that an account be taken and stated by a master of this court of all the property of the defendant railway company, whether the same appear upon the books of said railway or to be ascertained by evidence, including all properties, whether real, personal, or mixed, which legally or equitably belong to said railway, whether held in the name of the defendant, John D. Beardsley, or otherwise, and whether acquired before or after the construction contract entered into by the directors of the defendant railway and the defendant, John D., as herein mentioned; and your orator be declared and decreed to be a tenant in common with said defendant, John D., in said defendant railway, and in all of said properties to have and to hold an undivided one-third thereof; that the president and secretary of the defendant railway company be required to issue
25 and deliver to your orator certificates of stock for one-third of all the stock of the defendant railway, so far as the same has been completed as aforesaid, at the rate of twenty thousand dollars per mile, in shares of the par value of one hundred dollars each; that the defendant be declared and decreed to be a trustee for your orator in the construction contract entered into by said defendant and the directors of the defendant railway for the construction of said railway as aforesaid, and also in the contract made by said defendant with the Pan Electric Telephone Company as aforesaid, and that your orator's interest in each of said contracts and the benefits arising therefrom be declared and decreed to be a full one-third thereof, and that the master appointed to take and state the account between your orator and the defendant, John D., as prayed for herein, be empowered and directed also to state the respective interests of your orator and said defendant, John D., in and to the property, moneys, assets, profits, and benefits arising from said contract, and that the defendant be required to disclose and account for all moneys and property legally and equitably belonging to the defendant railway or your orator which have been applied by him at any time to his own account or purposes and not already fully accounted for by him; that the defendant, John D., be declared and decreed as holding all the property purchased by or given to him

for the defendant railway, as hereinbefore specifically set forth, as a trustee for the use and benefit of the said railway, and that he be required to make a deed or deeds to all of said property to the party equitably entitled thereto and account for such portions thereof as he may have converted to his own use; that the credit of $4,732.50 in favor of the defendant, John D., upon the books kept by the auditor of the defendant railway, being the proceeds of the sale of the iron, &c., of the narrow-gauge railroad as aforesaid, be cancelled and charged back to him and put to the credit of the defendant railway; that the defendant railway be required to pay to your orator the sum of one hundred dollars per month for every month since the first day of December, 1883, for balance due him as salary to equal
26 the amount drawn by the defendant, John D., from the revenues of the defendant railway as aforesaid; that a receiver be appointed to take charge and control of said defendant railway and all of its properties, and control and manage the same under the orders and directions of this honorable court during the pendency of this action and until the final decree may be rendered herein, and for such other and further relief as to the court may seem equitable and just and the nature of the cause may require, and that a writ of subpœna be issued, directed to the said John D. Beardsley and the Arkansas and Louisiana Railway Company, commanding them, at a day certain and under a certain penalty to be therein inserted, personally to be and appear before this honorable court, then and there to answer the premises and to stand and abide such order and decree therein as shall seem agreeable to equity and good conscience.

JONES & MARTIN,
Solicitors for Complainant.

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

At the city of Little Rock, in the county of Pulaski and district aforesaid, this 11th day of March, in the year 1886, personally appeared before me, Ralph L. Goodrich, clerk of said court, the above-named Paul F. Beardsley and made oath that the facts set forth in the foregoing bill so far as they purport to be made of his own knowledge are true, and so far as they purport to be stated on information and belief he believes them to be true.

PAUL F. BEARDSLEY.

Given under my hand this 11th day of March, in the year 1886.

RALPH L. GOODRICH, *Clerk,*
By W. P. FEILD, *D. C.*

The complainant, Paul F. Beardsley, waives verification under oath by the defendants in the foregoing bill of their answers and any pleadings they may file in this cause.

JONES & MARTIN,
Solicitors for Complainant.

We undertake for costs in the usual way.

JONES & MARTIN.

27 EXHIBIT "A."

Articles of Association of the Washington and Hope Tramway Company.

The undersigned, citizens of Hemstead county, in the State of Arkansas, have associated themselves together for the purpose of constructing, operating, maintaining, and owning a tramway for public use in the conveyance of persons and property, as set forth in the following articles, and reserving to themselves and to their successors and assigns the privilege, whenever the same may be deemed advisable and expedient by a majority in interest of the stockholders therein, to change the same into a railroad corporation in conformity with an act of the General Assembly of the State of Arkansas entitled "An act to provide for a general system of railroad incorporation," approved July 23rd, 1868, or in conformity with any law which may be in force at the time of such change:

Article 1. The name of the corporation shall be the "Washington and Hope Tramway Company."

Article 2. The corporation shall continue ninety-nine years from the date of these articles of incorporation.

Article 3. The capital stock of the corporation shall be twenty thousand dollars, divided into shares of twenty-five dollars each. The cost of constructing the tramway, the right of way, motive power, and the other appurtenances for the completion and running of the tramway will be, as near as can be estimated, twenty-thousand dollars.

Article 4. There shall be seven directors to manage the affairs of the corporation. The following-named persons shall constitute the first board of directors, viz: William H. Carruth, Richard L. Hinton, Joel D. Conway, Robert A. Carragan, Thomas H. Simms, Burrill B. Battle, and James K. Jones.

Article 5. The tramway shall commence at the town of Washington, in Hempstead county and State of Arkansas, and run thence in a southerly direction to the town of Hope, in the same county and State. Said line of tramway is nearly ten miles in length and is all in the said county of Hempstead.

28 Article 6. The commissioners to open books of subscription to the capital stock of the corporation shall consist of the following-named persons, to wit, William P. Hart, Henry Lazarus, William D. Green, Abner B. Williams, and James W. Williams, and they shall also have full power and authority to receive donations of land and other property and accept deeds for the same in the name of the corporation and to solicit and obtain the right of way from the owners of land along the line of the tramway.

In testimony whereof we have hereunto affixed our names and the shares of stock we each agree to take on this 11th day of April, A. D. 1877.

Names.	Residence.	Shares.	Value.
W. P. Hart	Washington.	40	$1,000
R. A. Carragan	"	"	"
Thos. H. Simms	"	"	"
W. H. Carruth	"	"	"
John Justus	"	20	500
R. C. Phillips	"	40	1,000
J. J. Thomas	"	"	"
B. B. Battle	"	20	500
T. Williams	"	"	"
J. D. Conway	"	"	"
M. Andrews	"	40	1,000
R. L. Hinton	"	20	500
Henry Lazarus	"	"	"
A. B. Williams	"	"	"
James K. Jones	"	"	"
R. B. Williams	"	10	250
H. Wright	"	"	"
Wash. Rowton	"	"	"
W. D. Green	"	"	"
Jas. M. Williams	"	"	"
A. N. Carnagan	"	"	"

29 Endorsed: Filed in my office on the 7th day of May, 1877. B. B. Beavers, secretary of state, by G. W. St. Clair, deputy. Recorded in Book 3, articles of association, pages 29 and 30. B. B. Beavers, secretary of state, by J. J. Beavers, clerk.

EXHIBIT "B."

Articles of Association of the Washington and Hope Railway Company.

We, the undersigned, having heretofore associated ourselves together by within articles, under and by the name of the Washington and Hope Tramway Company, for the purpose of constructing, operating, maintaining, and owning a tramway for public use in the conveyance of persons and property from the town of Washington, in the county of Hempstead and State of Arkansas, to the town of Hope, in the same county and State, and by said within articles reserved to ourselves and to our successors and assigns the right and privilege, whenever the same may be deemed advisable and expedient by a majority in interest of the stockholders in such association, to change the same into a railroad corporation in conformity with an act of the General Assembly of the State of Arkansas entitled "An act to provide for a general system of railroad incorporation," approved July 23rd, 1868, or in conformity with any law which may

be in force at the time of such change, and being a majority in interest of said stockholders, and deeming it advisable and expedient to change said tramway association — corporation into a railroad corporation in conformity with the act of the General Assembly of the State of Arkansas aforesaid and the laws of said State, and having become in good faith subscribers to the capital stock of the proposed railroad, hereinafter described, to an aggregate amount exceeding the sum of ten thousand dollars, do hereby change said tramway
30 association or corporation into a railroad corporation, and do hereby associate ourselves together for the purpose of constructing, operating, maintaining, and owning a railroad for public use in the conveyance of persons and property, as set forth in the following articles and under the provisions of the laws of the State of Arkansas—first, the name of the corporation shall be the Washington and Hope Railway Company; secondly, the corporation shall continue ninety-nine years from the date of these articles of association; third, the capital stock of the corporation shall be forty-five thousand dollars, divided into shares of twenty-five dollars each; the cost of constructing the road, the right of way, motive power, and other appurtenances for the completion and running of the road will be, as near as can be estimated, forty-five thousand dollars; fourth, the concerns of the company shall be managed by seven directors, in accordance with law, each of whom shall be a stockholder of the corporation, owning stock absolutely and in his own right and qualified to vote for directors at the election at which he shall be chosen and possessing all the other qualifications prescribed by law; for the present and until other directors may be elected in accordance with law the following-named persons are hereby declared duly elected and empowered to act as directors of said corporation, to hold office and exercise all the powers and authority of directors until others shall be lawfully elected and qualified, to wit, William H. Carruth, Richard L. Hinton, Joel D. Conway, Robert A. Carragan, Thomas H. Simms, Burrill B. Battle, and James K. Jones; fifth, the road shall commence at the town of Washington, in the county of Hempstead and State of Arkansas, and run thence to the town of Hope, in the same county and State, at or near the depot of the St. Louis, Iron Mountain and Southern railway, in the last mentioned town; the length of the said road, as near can be estimated, is nine and a half miles and is all within said county of Hempstead; sixth, the following-named persons, to wit, William P. Hart, Henry Lazarus, William D. Green, Abner B. Williams, and James W. Williams, are hereby constituted and appointed commissioners to open
31 books of subscription to the capital stock of said corporation and empowered to do and perform all things enjoined on such commissioners by the law in such cases made and provided.

To the maintenance of these articles of association we do hereby severally and mutually bind ourselves and hereunto subscribe our names, places of residence, and the number of shares of stock in said company taken by each of us, and we agree, direct, demand, and require that these articles be filed with the secretary of state of the State of Arkansas, and that every other act and thing required

and necessary to constitute us a railroad corporation under the laws of the State of Arkansas according to the spirit, intent, and purpose of these articles be done and performed at the very earliest day practicable, this the — day of ——, in the year of our Lord one thousand eight hundred and seventy-seven (1877).

Names of subscribers.	Residence.	Shares.	Amount.
W. H. Carruth	Washington, Ark.	40	$1,000
R. A. Carrigan	"	"	"
W. P. Hart	"	"	"
R. C. Phillips	"	"	"
M. L. Andrews	"	"	"
Thomas H. Simms	"	"	"
B. B. Battle	"	20	500
A. B. Williams	"	"	"
James K. Jones	"	"	"
John Justus	"	"	"
Henry Lazarus	"	"	"
J. T. Williams	"	"	"
J. D. Conway	"	"	"
Jas. W. Williams	"	10	250
H. Wright	"	14	350
Wash. Rowton	"	10	250
32 C. M. Conway	"	10	250
R. P. Winn	"	"	"
R. B. Williams	"	"	"
W. J. Furguson	"	"	"
A. N. Carrigan	"	"	"
S. T. Hargis	"	4	100
H. J. Trimble	"	"	"
C. Jagersfeld	"	"	"
W. D. Green	"	10	250
J. J. Thomas	"	20	500
John Wallace	"	4	100

STATE OF ARKANSAS, }
County of Hempstead. }

Be it remembered that on this the 31st day of May, A. D. 1877, before me, Thomas H. Simms, the acting and duly commissioned clerk of the circuit court of the county of Hempstead and State of Arkansas, personally appeared (all the parties above named as subscribers) to me personally well known as the persons whose names appear upon the above and foregoing articles of association as the subscribers thereto, and severally stated and acknowledged that they had severally executed the same and subscribed thereto their respective names, places of residence, and the numbers of shares of

stock respectively taken by them in the company mentioned therein for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

Witness my hand and official seal of office this the day and year first above written.

[SEAL.] THOS. H. SIMMS, *Clerk.*

Next comes the certificate of S. T. Sanders, a justice of the peace, that T. H. Simms appeared before him and acknowledged signing, residence, &c.

33 STATE OF ARKANSAS, *County of Hempstead:*

On this day personally appeared before me, the undersigned, an acting and duly commissioned justice of the peace within and for the county of Hempstead, in the State of Arkansas, Thos. H. Simms, Robert A. Carrigan, and James K. Jones, three of the directors named in the above and foregoing articles of association, who, being first duly sworn, depose and say that stock to the amount of at least one thousand dollars for every mile of the road described in the said articles of association has actually been paid unto the directors named in said articles.

THOS. H. SIMMS.
R. A. CARRAGAN.
JAMES K. JONES.

Subscribed and sworn to before me this 11th day of June, A. D. 1877.

S. T. SANDERS, *J. P.*

Endorsed: Filed in my office on this, the 14th day of June, A. D. 1877. B. B. Beavers, secretary of state, by G. W. St. Clair, deputy. Recorded in book "Articles of Association" 3, pages 39 to 43, inclusive. B. B. Beavers, secretary of state, by J. J. Beavers, clerk

EXHIBIT "C."

Whereas, on the 14th day of June, A. D. 1877, William H. Carruth, Robert A. Carragan, William P. Hart, R. C. Phillips, M. J. Andrews, Thos. H. Simms, Burrill B. Battle, Abner B. Williams, James K. Jones, John Justis, R. I. Hinton, Henry Lazarus, T. J. Williams, J. D. Conway, Jas. W. Williams, W. J. Furguson, A. W. Carrigan, S. T. Hayes, H. J. Trimble, C. Jagersfield, W. D. Green, J.
J. Thomas, and John Wallace associated themselves together
34 by written articles of association, under and by the name of the Washington and Hope Railway Company, which were filed in the office of the secretary of state of the State of Arkansas, pursuant to an act of the General Assembly of the State of Arkansas entitled "An act to provide for a general system of railroad incorporation," approved July 23rd, A. D. 1868, for the purpose of constructing, maintaining, owning, and operating a railroad for public

use in the conveyance of persons and property from the town of Washington, in the county of Hempstead, in the State of Arkansas, to the town of Hope, in the same county and State, as will appear more fully by said articles of association now on file in the said office of the said secretary of state.

And whereas the said Washington and Hope Railway Company is desirous of extending its said road, it does hereby, in conformity with said act of the General Assembly of the State of Arkansas, approved July 23rd, 1868, or any amendment thereto or any other law applying thereto, continue the said articles of association made by the parties aforesaid for themselves or their successors or assignees, and supplement and amend the same, for the purpose of constructing, maintaining, owning, and operating an extension of the said railroad for public use in the conveyance of persons and property, beginning at the present terminus of the Washington and Hope railroad, at the town of Washington aforesaid, thence in a northwesterly direction to a point on the line between the Indian Territory and the State of Arkansas, about township seven or eight south, passing through the counties of Hempstead, Howard, and Sevier; also beginning at the terminus of the said Washington and Hope railroad, at the town of Hope aforesaid; thence in a southeasterly direction to the line between the States of Arkansas and Louisiana, passing through the counties of Hempstead, Nevada, Columbia, and Union, in the general direction of Monroe, Louisiana, the whole, including the said Washington and Hope railroad, to constitute one continuous line of railroad from said line of the Indian Territory to said line between the States of Arkansas and Louisiana, the
35 distance being about one hundred miles.

And the stockholders of the said Washington and Hope Railway Company having in good faith subscribed and paid up stock of the said company to an amount equal to one thousand dollars per mile for the whole distance of said proposed extension, as well as of the road in operation, do hereby amend and supplement said articles of association for the purpose of extending, constructing, maintaining, owning, and operating said railroad as set forth herein and under the provisions of the laws of the State of Arkansas:

First. The name of this said corporation shall be changed from the name of the Washington and Hope Railway Company to the Arkansas and Louisiana Railway Company. Second. The said corporation shall continue for ninety-nine years from this date. Third. The capital stock of this company shall be increased to one million dollars, divided into shares of twenty-five dollars each. The present stock of the Washington and Hope Railway Company shall be stock of this company and the holders shall be entitled to vote it as such, and at their option they may at any time exchange it for stock under the new name in like amounts. The cost of constructing the said road, the right of way, motive power, rolling-stock, &c., will be, as near as can be estimated, one million of dollars. Fourth. The present organization of the Washington and Hope Railway Company shall continue and the name and the extension shall not be held to make any change

in the organization, time of election, the by-laws, or obligations of the Washington and Hope Railway Company. Fifth. The point of beginning shall be as aforesaid at a point on the line of the Indian Territory and the State of Arkansas near township seven or eight south, thence in a southeasterly direction through the counties of Sevier, Howard, and Hempstead, including in its line as a part of the same the Washington and Hope railroad as now constructed, and through the counties of Nevada, Columbia, and Union to the line between the States of Arkansas and Louisiana in the direction of Monroe, Louisiana.

36 For the maintenance and continuance of the articles of association as supplemented and amended the Washington and Hope Railway Company has caused its seal to be hereto affixed and this to be signed by its president and secretary and has directed that the amendment be filed with the secretary of state for the State of Arkansas, and that every act and thing requisite and necessary to continue and constitute it a railway corporation by the name and style of the Arkansas and Louisiana Railway Company under the laws of the State of Arkansas according to the spirit, intent, and purpose of these articles be done and performed at the very earliest date practicable.

Done and signed this 31st day of October, A. D. 1881.

W. H. CARRUTH, *President.*

Endorsed: Filed Nov. 7th, 1881, in the office of secretary of state of Arkansas. Jacob Frolich, secretary of state, by D. McRae, deputy. Recorded in Book No. 4, Articles of Association, pp. 248, '9, '50, on this the 26th day of November, A. D. 1881. Jacob Frolich, sec. state.

Exhibit "D."

Articles of Association of the Arkansas and Louisiana Railway Company.

The undersigned citizens of the State of Arkansas have associated themselves together for the purpose of constructing, operating, maintaining, and owning a railroad for public use in the conveyance of persons and property as set forth in the following articles and under the provisions of the laws of the State of Arkansas: First. The name of the corporation shall be the Arkansas and Louisiana Railway Company and shall continue for ninety-nine years from the dates of these articles of association. Second. The capital stock

37 of the corporation shall be one million two hundred thousand dollars, divided into shares of one hundred dollars each. The cost of constructing the road, the right of way, motive power, and other appurtenances for the completion and running of the road will be, as near as can be estimated, one million two hundred thousand dollars.

Third. The concerns of the company shall be managed by five or more directors in accordance with law, each of whom shall be a stockholder of the corporation, owning stock absolutely and in its own right, and qualified to vote for directors at the election at which

they may be chosen, and possessing all other qualifications prescribed by law. For the present and until other directors may be elected in accordance with law the following-named persons are hereby declared elected and empowered to act as directors of said corporation, to hold office and exercise all the power and authority of directors until others shall be elected and qualified, to wit: John D. Beardsley, Thomas H. Simms, Paul Beardsley, Abner B. Williams, and Robert B. Williams.

Fourth. The road shall begin at or near the town of Hope, in the county of Hempstead, thence in a southeasterly direction by or near the town of Magnolia, and thence to the line between the States of Louisiana and Arkansas, terminating on said line at or near the township line between township nineteen and twenty south, in range nineteen west. The road will pass through portions of the counties of Hempstead, Nevada, and Columbia, and will be about sixty miles long.

The following-named persons, to wit, Albert C. Baird, William A. Jett, John E. Williams, Henry J. Trimble, and J. M. Simms, are hereby constituted and appointed commissioners to open books of subscription to the capital stock of said corporation, and empowered to do all things enjoined on commissioners in such cases according to law.

To the maintenance of these articles of association we do hereby bind ourselves severally and mutually, and hereunto subscribe our names, places of residence, and the number of shares of stock in said company taken by each of us; and we agree, direct, and re-
38 quire that these articles be filed with the secretary of state of the State of Arkansas, and that every other act and thing requisite and necessary to constitute us a railroad corporation under the laws of the State of Arkansas, according to the spirit, intent, and purpose of these articles, be done and performed as soon as practicable.

Done and signed by us, respectively, this the 11th day of September, A. D. 1882.

Names.	Residence.	Shares.	Amounts.
J. D. Beardsley	Washington, Ark.	400	$40,000 00
Thos. H. Simms	"	10	1,000 00
Paul F. Beardsley	"	200	20,000 00
A. B. Williams	"	10	1,000 00
R. B. Williams	"	5	500 00

Endorsed: Filed in office of secretary of state this 13th day of September, 1882. Jacob Frolich, sec. state. Recorded in Book No. 5, Articles Association, pp. 49–50, this 4th day of September, 1882. Jacob Frolich, sec. state, by W. H. Langford, clerk.

EXHIBIT "E" TO BILL.

Articles of Association of the Arkansas and Indian Territory Railway Co.

The undersigned, citizens of the State of Arkansas, have associated themselves together for the purpose of constructing, operating, and owning a railroad for the public use in the conveyance of persons and property, as set forth in the following articles and under the provisions of the laws of the State of Arkansas: First, The name of the corporation shall be the Arkansas and Indian Territory Railway Company, and shall continue for nienty-nine years from the date of these articles of association; second, the capital stock of the corporation shall be one million dollars, divided into shares of one hundred dollars each. The cost of constructing the road, the right of way, motive power, and the other appurtenances
39 for the completion and running of the road will be, as near as can be estimated, one million dollars.

Third. The concerns of the company shall be managed by six directors in accordance with law, each of whom shall be a stockholder of the corporation owning stock absolutely and in his own right and qualified to vote for directors at the election at which they may be chosen and possessing all other qualifications prescribed by law. For the present and until other directors may be elected in accordance with law the following-named persons are hereby declared duly elected and empowered to act as directors of said corporation, to hold office and exercise all the power and authority of directors until others shall be lawfully elected and qualified, to wit: William H. Carruth, William P. Hart, Henry B. Holman, Joel D. Conway, John D. Beardsley, and Paul Beardsley.

Fourth. The road shall begin at the line between the State of Arkansas and the Indian Territory, in the county of Sevier or the county of Polk, in the State of Arkansas, as may be found best on a survey of the line for the road, thence in a southeasterly direction to or near the town of Washington, in the county of Hempstead, and terminating at a junction to be made with the Washington and Hope railroad, now in operation. The road will pass the counties of Sevier, Howard, and Hempstead, and will be about fifty miles in length.

Fifth. The following-named persons, to wit, Albert C. Baird, W. A. Jett, John E. Williams, Henry J. Trimble, J. M. Simms, are hereby constituted and appointed commissioners to open books of subscription to the capital stock of said corporation, and empowered to do and perform all things enjoined on commissioners in such cases according to law.

To the maintenance of these articles of association we hereby severally and mutually bind ourselves and hereto subscribe our names, places of residence, and the number of shares of stock in said company taken by each of us; and we agree, direct, and require that these articles be filed with the secretary of state of the State
40 of Arkansas, and that every other act and thing requisite and necessary to constitute us a railroad corporation under

the laws of the State of Arkansas according to the spirit, intent, and purpose of these articles be done and performed as soon as practicable.

Done and signed by us, respectively, this the 11th day of September, 1882.

Name.	Residence.	Shares.	Value.
W. H. Carhuth	Washington, Ark.	10	$1,000 00
H. B. Holman	"	1	100 00
W. P. Hart	"	10	1,000 00
J. D. Conway	"	5	500 00
J. D. Beardsley	"	400	40,000 00
Paul Beardsley	"	200	20,000 00

Endorsed: Filed in office of secretary of state this the 13th day of September, 1882. Jacob Frolich, sec. state. Recorded in Book 5, Articles Association, p. 47–'8, Oct. 4th, 1882. Jacob Frolich, sec. state, by W. H. Langford, clerk.

EXHIBIT "F."

STATE OF ARKANSAS, *Hempstead County:*

Before the undersigned, an acting and duly commissioned notary public in and for the county and State aforesaid, personally came John D. Beardsley, Paul Beardsley, and —— ——, three of the directors named in the articles of association of Arkansas and Indian Territory Railway Company, filed in the office of the secretary of state of the State of Arkansas on the — day of September, A. D. 1882, who, being duly sworn, depose and say that stock to the amount of at least one thousand dollars for every mile of the road described in said articles of association has been subscribed, and that five per cent. on the amount subscribed thereto by the subscribers to the said
41 articles of association has actually been paid to the directors named in said articles.

J. D. BEARDSLEY.
P. F. BEARDSLEY.
H. B. HOLMAN.

Sworn to and subscribed before me this the 18th day of September, A. D. 1882.

Witness my hand and official seal as such notary public the date above written.

JOHN E. WILLIAMS,
Notary Public.

Endorsed: Filed in the office of secretary of State of Arkansas on this 20th day of September, 1882. Jacob Frolich, secretary state.

Recorded in Book No. 5, for Articles of Incorporation, p. 106, this 24th day of January, A. D. 1883. Jacob Frolich, secretary state, by Godden.

EXHIBIT "G."

Memorandum of an agreement made and entered into this the 18th day of September, A. D. 1882, by and between the Washington and Hope Railway Company, a corporation organized and existing by virtue of the laws of this State, party of the first part, and the Arkansas and Indian Territory Railway Company, a corporation organized and existing by virtue of the laws of this State, party of the second part:

Whereas the party — owns and operates a line of railroad between the towns of Washington and Hope, in Hempstead county, in said State, and the party of the second part has been organized and incorporated for the purpose of constructing a line of railroad from the town of Washington aforesaid, in a northwesterly direction, to the line between this State and the Indian Territory, and the said roads will form continuous and connecting lines of railroad with each other; and whereas the party of the first part is authorized by the laws of this State to sell and the party of the second part
42 to purchase and operate the line of railroad owned by the party of the first part, and it is believed the sale will be beneficial to the stockholders of each of said corporations and to the public:

Now, therefore, this agreement witnesseth: That the party of the first part, in consideration of the issue to it by the party of the second part of one hundred thousand dollars of its paid-up capital stock and of the agreement of the party of the second part hereinafter contained, have bargained, granted, and sold, and doth by these presents grant, bargain, sell, transfer, assign, and convey, unto the party of the second part and to its successors and assigns all and singular its railroad, including its rights of way, road-bed and tracks, switches and side tracks, turn-tables, water-tanks, depot buildings, freight-houses, engines, tenders, cars, trucks, and all rolling stock of every kind and all material of every description on hand for the purpose of operating, repairing, or running said railroad, all the lands donated by the State of Arkansas to the party of the first part by an act of the General Assembly entitled "An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, 1879, and more particularly described in a deed of conveyance executed by Thomas J. Churchill, Governor of the State of Arkansas, executed on the 30th day of January, A. D. 1882, and which is duly recorded on pages 494–5, in volume No. 13 of the records of deeds and mortgages in the office of the circuit clerk and *ex officio* recorder of Hempstead county, and also such lands as may hereafter be conveyed to the party of the first part by the Governor of the State of Arkansas under said act of the General Assembly aforesaid, together with all other personal property and all real estate owned by the party of

the first part and situated in Hemstead county, in the State of Arkansas, or elsewhere, and all the rights, privileges, and franchises conferred upon the party of the first part by the general statutes of the State for the incorporation of railroad companies, including the exclusive right to own, operate, and maintain a railroad be-
43 tween the towns of Washington and Hope, in Hempstead county aforesaid; to have and to hold the above-described property, franchises, lands, and appurtenances unto the said party of the second part and its successors and assigns.

And the party of the second — for and in consideration of the aforesaid conveyance, hereby agrees that it will pay off and discharge all liabilities and debts of every kind due and owing or to become due by the party of the first part.

And it is further agreed by and between the parties aforesaid that the said party of the second part shall change its name and style to that of the Arkansas and Louisiana Railway Company, Northern Division, and that the paid-up stock herein agreed to be paid to the party of the first part shall be in the name of the Arkansas and Louisiana Railway Company (Northern Division).

In testimony whereof the directors of the several corporations parties hereto have caused these presents to be signed in the names thereof by — respective presidents, and their several corporate seals to be affixed hereto this the 18th day of September, A. D. 188

WASHINGTON & HOPE RAILWAY COMPA[illegible],
By W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

ARKANSAS AND INDIAN TERRITORY RAILWAY CO.,
By H. B. HOLMAN, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

STATE OF ARKANSAS, *Hempstead County:*

Be it remembered that on this the 18th day of September, A. D. 1882, before me, John E. Williams, an acting and duly qualified notary public in and for the county and State aforesaid, and duly authorized by law to take acknowledgments of deeds and other writings to be used or recorded in said State of Arkansas, person-
44 ally appeared William B. Carruth, president of the Washington and Hope Railway Company, to me well known to be the person whose name appears upon, and whose name is subscribed to the within and foregoing deed, and he being duly sworn, did depose and say that he was president of said company at the date of the execution of the foregoing instrument, and still is such president, and that the instrument was executed by and under a resolution of the directors of said company, and that the said instrument was executed and delivered by the said company aforesaid, acting through him, acting as such president thereof by virtue of said resolutions as the act and deed of said company, and for the considerations, uses, and purposes therein mentioned and set forth.

Witness my hand and official seal as such notary public of the county and State aforesaid this the 18th day of September, A. D. 1882.

JOHN E. WILLIAMS,
Notary Public.

OFFICE OF THE WASHINGTON & HOPE RAILWAY COMPANY,
WASHINGTON, ARK., *Sep. 18th, A. D.* 1882.

At a meeting of the stockholders held pursuant to notice, on this day, at the office of the company, stockholders owning two-thirds and more of the stock being present, the following among other proceedings were had: Resolved, That the agreement for selling the railroad belonging to this company, together with all its property, lands, tenements, and franchises, to the Arkansas and Indian Territory Railway Company, and the deed of transfer and conveyance which has been executed on behalf of this company by William H. Carruth, its president, under and by virtue of the authority of a resolution of the board of directors of said company and now here submitted to this meeting for approval and adoption be, and the same is hereby, approved and adopted, and it is ordered that the secretary endorse a copy of this resolution on the deed executed by the company to the Arkansas and Indian Territory Railway Company.

45 I, Robert B. Williams, secretary of the Washington and Hope Railway Company, do certify that the foregoing resolution is truly copied from the minutes of the proceedings of the stockholders of the said company.

Witness my hand and seal of said company this the 18th day of September, A. D. 1882.

R. B. WILLIAMS, *Secretary.*

STATE OF ARKANSAS, *County of Hempstead:*

I, Sam. Gibson, clerk of the circuit court and *ex officio* recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 3rd day of January, A. D. 1883, at 5 o'clock p. m., and the same is now duly recorded with the acknowledgement and certificate thereon, in Record Book, vol. 14, on pages 251-'2-'3-'4.

In witness whereof I have hereunto set my hand and affixed the seal of said court at office in Washington this 3rd day of January, 1883.

SAM. GIBSON,
Clerk and ex Officio Recorder.

Endorsed: Filed in my office for record the 3rd day of January, A. D. 1883, at 5 o'clock p. m. Sam. Gibson, clerk and *ex officio* recorder. Filed in the office of the secretary of state on this 12th day of January, A. D. 1883. Jacob Frolich, secretary state. Recorded in Book No. 5 for Articles of Incorporation, pages 107-'8-'9-10, this 25th day of January, A. D. 1883. Jacob Frolich, secretary state, by Godden.

46 EXHIBIT "H."

Whereas the capital stock of this company is one million two hundred thousand dollars, which is the estimated cost of construction of sixty miles of its line of road from the town of Hope in a southeasterly direction to the line between the State of Louisiana and the State of Arkansas; and whereas the entire distance from the boundary line between the State of Arkansas and the Indian Territory to the boundary line between the States of Arkansas and Louisiana, over which it is proposed by this company to construct its road — about one hundred and twenty miles;

And whereas, to meet the estimated expense of past and future construction upon said line, it is necessary to increase the capital stock of this company to the amount of $20,000 per mile for the entire distance of one hundred and twenty miles as above stated:

Therefore, be it resolved, That the capital stock of this company, by and with the consent of the holders of a majority of its capital stock as required by law, is hereby increased to the sum of $1,200,000, so that the total capital stock shall be two million four hundred thousand dollars.

OFFICE OF THE ARKANSAS AND LOUISIANA RAILWAY CO.,
WASHINGTON, ARK., *June 20th*, 1883.

I, Robert B. Williams, secretary of the Arkansas and Louisiana Railway Company, do hereby certify that the above and foregoing resolution which, was adopted by the board of directors of said company on the 20th day of June, 1883, and on the same day unanimously ratified and adopted by a meeting at which the holders of all the capital stock of said company were present and voting (sixty days' notice of said meeting having been waived in writing by each of the said stockholders), is truly, correctly, and completely copied from the proceedings of the meeting of said stockholders as
47 the same now appears upon the records of said company.

In testimony whereof I have hereunto set my hand as such secretary and affixed the corporate seal of said company, on this the 21st day of June, A. D. 1883.

R. B. WILLIAMS,
[SEAL.] *Sec. Ark. & La. Railway Co.*

STATE OF ARKANSAS, *Hempstead County:*

Before the undersigned, an acting and duly commissioned notary public, in and for the county and State aforesaid, personally came John D. Beardsley, Paul F. Beardsley, and Robert B. Williams, three of the directors named in the articles of association of the Arkansas and Louisiana Railway Company, filed in the office of the secretary of state of the State of Arkansas on the 13th day of September, A. D. 1882, who, being duly sworn, depose and say that stock to the amount of at least one thousand dollars for every mile of the road described in said articles of association and intended to

be built has been subscribed, and that five per cent. on the amount so subscribed has been actually paid by the subscribers to said articles of association unto the directors of this company and within the time prescribed by law.

J. D. BEARDSLEY.
PAUL F. BEARDSLEY.
R. B. WILLIAMS.

Sworn to and subscribed before me this the first day of March, A. D. 1883.

Witness my hand and official seal as such notary public this the day and date above written.

JNO. E. WILLIAMS, *Notary Public.*

48 OFFICE OF THE ARKANSAS AND
INDIAN TERRITORY RAILWAY COMPANY,
WASHINGTON, ARK., *June 17th*, 1883.

This is to certify that in — pursuant to the statute in such cases made and provided the Arkansas and Indian Territory Railway Company, by resolutions adopted by a full meeting of the board of directors and ratified by all of the holders of the capital stock of said company, on the 17th day of May, A. D. 1883, granted, bargained, sold, conveyed, and aliened to the Arkansas and Louisiana Railway Company and to its successors and assigns all and singular its railroad, including its rights of way, road-bed, tracks, switches, side tracks, turn-tables, water tanks, depot buildings, freight-houses, engines, tenders, cars, trucks, and all rolling-stock of every kind and all material of every description on hand for the purpose of operating, repairing, or running said railroad, all the lands donated by the State of Arkansas to the Washington and Hope Railway Company by an act of the General Assembly entitled "An act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, 1879, and also such lands as may hereafter be conveyed to the said Washington and Hope Railway Company by the governor of the State of Arkansas, under the said act of the General Assembly, together with all other personal property and real estate owned by said Arkansas and Indian Territory Railway Company and situated in Hempstead county and State of Arkansas or in any other county in said State or elsewhere; and all of the rights, privileges, and franchises conferred upon said Arkansas and Indian Territory Railway Company by the statutes of the State of Arkansas or acquired by it by purchase, donation, or otherwise, including the exclusive right to construct, own, operate, and maintain a railroad between the town of Hope, in the county of Hempstead, in the State of Arkansas, and the point on the line between the said State of Arkansas and the Indian Territory mentioned in the articles of incorporation of said company as the terminal point of said road.

49 In testimony whereof we, Henry B. Holman as president and Robert B. Williams as secretary of the Arkansas and Indian Territory Railway Company, have hereunto set our

hands respectively and affixed the corporate seal of said company at the office thereof on the day and year aforesaid.

R. B. WILLIAMS,
Sec. Ark. & Ind. Ter. Railway Company.
H. B. HOLMAN,
President Ark. & Ind. Ter. Railway Company.

OFFICE OF THE ARKANSAS AND
LOUISIANA RAILWAY COMPANY,
WASHINGTON, ARK., *June 17th*, 1883.

This is to certify that pursuant to the statute in such cases made and provided the Arkansas and Louisiana Railway Company, by resolutions adopted by a full meeting of the board of directors and ratified by all of the holders of the capital stock of the said company, on the 17th day of May, A. D. 1883, purchased from the Arkansas and Indian Territory Railway Company all and singular its railroad, including its rights of way, road-bed, tracks, switches, depot buildings, freight-houses, engines, tenders, cars, trucks, and all rolling-stock of every kind, and all material of every description on hand for the purpose of operating, repairing, or running said railroad, all the lands donated by the State of Arkansas to the Washington and Hope Railway Company by an act of the General Assembly entitled "An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, 1879, and also such lands as may hereafter be conveyed to the said Washington and Hope Railway Company by the Governor of the State of Arkansas under the said act of the General Assembly, together with all other personal property and real estate owned by said Arkansas and Indian Territory Railway Company, and situated in Hempstead county, in the State of Arkansas, or in any other county in said State or elsewhere, and all the rights, privileges, and franchises conferred upon said Arkansas and Indian Territory Railway Company by the statutes of the State of Arkansas, or acquired by it by purchase, donation, or otherwise, including the exclusive right to construct, own, operate, and maintain a railroad between the town of Hope, in the county of Hempstead, in the State of Arkansas, and the point on the line between the said State of Arkansas and the Indian Territory mentioned in the articles of incorporation of said company as the terminal point of said road.

In testimony whereof we, William H. Carruth as president and Robert B. Williams as secretary of the Arkansas and Louisiana Railway Company, have hereunto set our hands respectively and affixed the corporate seal of said company at the office thereof, at the day and year aforesaid.

R. B. WILLIAMS,
Sec. Ark. & La. Railway Company.
W. H. CARRUTH,
President Ark. & La. Railway Company.

Endorsed: Filed in the office of secretary of state, on this the 25th day of June, A. D. 1883. Jacob Frolich, sec. state, by D. McRae, deputy. Recorded in Book No. 5, Art. Ass'n, pp. 239–243. Jacob Frolich, sec. state, by W. H. Langford, clerk.

(Endorsed:) Filed and writ issued March 11th, 1886. Ralph L. Goodrich, clerk, by W. P. Feild, d. c.

51 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern District of Arkansas, begun and holden on Monday, the 26th day of October, Anno Domini one thousand eight hundred and eighty-five, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

MARCH 22ND, 1886.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY and ARKANSAS AND LOUISIANA RAILWAY CO. } 811.

Now, on this day, comes the complainant, by Jones & Martin, Esqs., his solicitors, and the defendants, by J. M. Moore, Esq., their solicitor, and by consent it is considered, ordered, adjudged, and decreed by the court that the hearing of the application for a receiver in this cause be postponed until the first day of April next, and that in the meantime the defendant, John D. Beardsley, be restrained and enjoined from selling, conveying, encumbering, or otherwise changing the present attitude and condition of any of the property involved in this suit in any manner whatever until the hearing of said application.

52 And on April 2nd, 1886, as follows:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY and ARKANSAS & LOUISIANA RAILWAY COMPANY. } 811.

On this day comes the complainant, by Jones & Martin, his solicitors, and the defendants, by Williams, Conway and Moore, their solicitors, and the application for a receiver herein coming on to be heard upon the bill and exhibits thereto, and the answers of the defendants and the affidavits of various affiants, and the court being well and sufficiently advised in the premises, doth order, consider, adjudge, and decree that the motion for a receiver herein be denied.

It is further ordered, considered, adjudged, and decreed that all of the agents, officers, and employés of the defendant, The Arkansas and Louisiana Railway Company, shall pay over and deliver to W.

H. Carruth, the treasurer of the said defendant railway company, all of the gross earnings of said railway company, and that said Carruth shall keep a proper account of all such sums that may thus come into his hands and shall make all disbursements of the necessary current operating expenses of said railway company, and shall pay as they mature all outstanding indebtedness for material purchased for the road and property in controversy. When he shall have any doubt as to the validity of the demand, or that it is properly payable from the earnings of the road as a part of its indebtedness, he will refer the matter to this court for directions before payment. All of the net earnings of said railway he shall hold subject to the order of this court, and doth further order, consider, and adjudge that the defendants, John D. Beardsley and the Arkansas and Louisiana Railway Company be, and they are hereby, enjoined from in any manner encumbering, selling, or otherwise disposing of any portion of the property described in the bill of complaint
53 herein or any of the property of the Arkansas and Louisiana Railway Company until the further order of this court, save the town lots in the town of Nashville, in Howard county, and as to said lots it is ordered that the said John D. Beardsley may sell and make deeds to any of of said lots, but all proceeds of said sales shall be paid and delivered to the said W. H. Carruth who shall hold the same subject to the order of the court.

It is further ordered that a copy of this order shall be mailed to W. H. Carruth, which shall be his authority for acting in the premises.

Which answer of the Arkansas & Louisiana Railway Company is as follows:

In the United States Circuit Court for the Eastern District of Arkansas. In Chancery.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.*

The defendant, the Arkansas and Louisiana Railway Company, saving and reserving exceptions for the many errors and insufficiencies in said bill contained for its separate answer unto so much thereof as it is advised is material for it to answer, says: The allegations in said bill and in the answer of its codefendant in regard to the corporate organization of this defendant and of the acquisition by it of the property and franchises of its predecessors are true.

It is likewise true as alleged in the answer of its codefendant in regard to the construction contract between the defendant and its codefendant, and the terms of said contract are correctly set out in said answer and the exhibits thereto.

Complainant was not a party to the aforesaid contract for
54 the construction of its road, and had no interest therein so far as its officers or directors knew at the time said contract was entered into or now know.

Its dealings had been altogether with its codefendant, who was ostensibly acting for himself alone. And while this defendant had no knowledge as to the truth of the allegations of the bill as to the purchase by complainant of the stock of this defendant from its codefendant, it denies that either he or the said John D. Beardsley is the owner of any direct interest in said road or otherwise than as stockholders of this company.

And defendant, further answering, alleges that the promoters and directors of the Washington and Hope Railway Company and of its successors, including this defendant, were citizens of Washington, in Hempstead county, Arkansas; they are engaged in business at that place, and the most of their property is located there and in the vicinity. They had and still have a vital interest in the construction and extension of said railway under the terms and provisions of the several charters taken out as aforesaid. While it is true that they, acting in their capacities as directors, agreed and contracted with their codefendant to give him the greatest part of the stock of said corporation and to place him in possession of said road as lessee as a consideration to induce him to undertake the construction and extension thereof, nevertheless it was contemplated and provided in said contract that the organization of said company was to be maintained, and that sufficient of the stock of said company was to be reserved for the purpose of qualifying a legal directory in order that this defendant might and should retain the means and capacity to compel the performance by its codefendant of his contract; and this was done to the end that the object they had in view, viz., to secure the construction, equipment, and maintenance of said road, might not be defeated; and so defendant says it is not true as alleged in said bill that the maintenance of the corporate organization is merely formal and nominal, or that said road became
55 vested in said defendant either severally or as a tenant in common with the complainant.

Defendant further alleges that its codefendant, the said John D. Beardsley, is in the possession of said road and property as its lessee, under and in pursuance of the terms of the aforesaid contract, and he has since the execution thereof made the changes therein and the extension thereof as alleged in his answer herein.

That he agreed and undertook with this defendant to construct all its line of road, and is, as defendant is informed, negotiating for the means to continue the extension thereof.

This defendant believes and avers that its codefendant has managed said property honestly and faithfully and to the best advantage, and has utilized the earnings of the road in the construction, equipment, and improvement thereof. And it believes and alleges that to remove — from the control and management of said property would prove injurious if not disastrous to the interest of all parties concerned and particularly to the interest of this defendant.

And having answered as fully as it is advised is necessary for it

to do, defendant prays that its rights may be protected and preserved during the progress of said cause.

A. B. WILLIAMS,
J. D. CONWAY,
J. M. MOORE,
For Defendant.

(Endorsed:) Filed April 1st, 1886. Ralph L. Goodrich, clerk.

Which answer of J. D. Beardsley is as follows:

56 In the United States Circuit Court for the Eastern District of Arkansas. In Chancery.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY and THE ARKANSAS AND LOUISIANA RAILWAY COMPANY.

The defendant, John D. Beardsley, saving and reserving exceptions to the many errors and insufficiencies in the complainant's bill contained for his separate answer unto so much thereof as he is advised is material for him to answer, says it is true that the several corporations mentioned and described in said bill were incorporated at the time and in the manner alleged, and he supposes that Exhibits "A," "B," "C," "D," "E," and "F" to said bill were correct copies of the articles of incorporation of said several corporations; but he alleges that no stock was ever issued in pursuance of the subscriptions contained in the articles of association of the Arkansas and Indian Territory Railway Company or of the Arkansas and Louisiana Railway Company, nor was any part of said stock subscriptions ever paid in save what was paid by this respondent for the purpose of securing the charter. After the organization of said corporations and the purchase by them respectively and successively of the property and franchises of the Washingtou and Hope Railway Company, as set out in said bill, it was agreed that certain stock was to be and the same was in fact issued by the Arkansas and Louisiana Railway Company to the stockholders of the Washington and Hope Railway Company, as will herein be fully shown.

It is likewise true that the several sales and transfers of the property, rights, and franchises of said corporations alleged in said bill to have been made were made, and that the property and franchises of said several corporations were finally vested, by virtue of said sales and transfers, in respondent's codefendant, The Arkan-
57 sas and Louisiana Railway Company; and defendant herewith exhibits full and true copies of the records and proceedings of said incorporations in relation to said sales and transfers, marked respectively in alphabetical order from A to E, inclusive.

And he alleges that it was, among other things, agreed by and between the Washington and Hope Railway Company and the Arkansas and Indian Territory Railway Company, in the negotiations for

the purchase by the latter of the property and franchises of the former company, that the vendee would issue to the vendor one hundred thousand dollars of its paid-up capital stock, which was to be delivered to the stockholders of the vendor in lieu of the stock held by them in said corporation at the time of said sale, and said arrangement was assented to in writing by each and all of the stockholders of said company, as appears by reference to Exhibit "C" hereto.

And the same agreement was made by and between the Arkansas and Indian Territory Railway Company and respondent's codefendants, the Arkansas and Louisiana Railway Company, upon the purchase by the latter of the property and franchises of the former company, and was assented to by the stockholders of the former company, as will be seen by reference to Exhibit E hereto.

That the object and intention of said agreements was that each of the stockholders of the vendor corporations should obtain in the vendee corporation an amount of stock equal to what he had theretofore held in the vendor corporation, and upon the consummation of the respective sales aforesaid each of the stockholders of the vendor became entitled to an amount of stock in the vendee equal to what he had previously held in the prior corporation, and under said arrangements each stockholder in the Washington and Hope Railway Company acquired the right to the like amount of stock in the Arkansas and Louisiana Railway Company.

Respondent further says that his codefendant has issued one hundred thousand dollars of paid-up stock under and in pur-
58 suance of the aforesaid agreement, as will be hereinafter more fully shown, and that it has issued no other stock except what was issued to respondent as hereinafter stated.

Defendant, further answering, says: On the 10th day of September, 1879, he entered into a contract with the Washington and Hope Railway Company to construct a narrow-gauge railroad from Washington to Hope, the terminal points thereof. Under the terms of said contract respondent was to construct, temporarily, a tram road, and was within four years to replace the same with iron rails, and in consideration thereof the directors agreed that they would, upon the completion and acceptance of said road by them, procure the stock of said company to be transferred to respondent, except sufficient to qualify a legal directory under the provisions of the charter, and would obtain and deliver to him the sum of ten thousand dollars in the notes or obligations of responsible and solvent parties, one-half thereof payable to respondent ten days after the completion and acceptance of said road by the directory and the residue one year thereafter, which is herewith filed, marked "E 2."

That some time after he had entered into said contract he associated with him in said enterprise the said Vinton Alderman, who was and still is a citizen of Ohio. It was agreed between them that they should each contribute to the expense of constructing and completing said road, and upon the receipt of the stock thereof from the directory that it should be divided between them equally.

In the latter part of the year 1879, or early in 1880, respondent

completed the laying of said track, the greater part thereof being constructed with wooden rails or stringers. It soon became apparent that the road could not be operated with such material without constant expense and outlay resulting from the rapid wearing out of the wooden rails, and during said year respondent procured iron rails with which he relaid said track. Soon after the relaying and completion of said track as aforesaid the road was formally accepted by the directory. A copy of said resolution is filed, marked Ex. "F."

59 That — this time the capital stock of said corporation was forty-five thousand dollars, and upon the completion and acceptance by said company of said road as aforesaid the directors caused the same to be valued by a committee by them appointed for that purpose. A copy of said resolution is herewith filed, marked Ex. "G." The same was appraised at one hundred thousand dollars, and thereupon the stock of the company was increased to that sum, and paid-up certificates of said stock were issued to respondent for himself and the said Alderman, save a few shares reserved and issued to members of the directory for the purpose of rendering them eligible as directors. Said road was completed as aforesaid before the complainant came to Washington, and it is not true, as alleged, that he participated in the construction thereof.

Defendant further represents that the said Alderman had contemplated removing to Hempstead county, in this State, but in the year 1881 he concluded to remain in Ohio, and thereupon became anxious to dispose of his stock in the Washington and Hope Railway Company and several times wrote to respondent asking him to purchase the same, which he declined to do for the reason that he did not have the means necessary to make the purchase. The road was in debt and the earnings thereof were at the time very light; but about the — day of ——, 1881, defendant learned that the said Alderman was proposing to sell his stock to the president of the Texas and St. Louis Railway Company, which was a corporation constructing a narrow-gauge railroad in this State to be operated in competition with the St. L., I. M. & S. R'y, upon which road the Washington and Hope Company was largely dependent.

Defendant knew said company and the president thereof could command large capital, and was fearful that if he acquired said stock it would prove prejudicial to respondent's interest. Wherefore and solely in consideration of said information he wrote at once to the said Alderman proposing that he would purchase

60 his stock for twelve thousand dollars if he would sell it to him on a credit. His proposition was accepted by the said Alderman, and he thereupon became the purchaser and owner of said stock.

And the defendant denies that he made said purchase or that he ever at any time had any correspondence with the said Alderman in regard to the purchase of said stock at the request or the solicitation of the complainant, or that he ever at any time prior or subsequent to said purchase had any conversation or consultation, agreement or understanding, with complainant with regard thereto,

and if complainant himself had any correspondence with the said Alderman on the subject respondent is not aware of it. He, however, does not believe that he had, or that he ever thought of purchasing said stock.

He denies that he wrote to complainant requesting him to come from California and take an interest in said road, or that complainant came to Washington for that purpose at defendant's request.

Further answering, respondent says in the fall of 1881 he received a letter from the complainant, written in California, stating that he was coming East and requesting respondent to meet him in St. Louis. Respondent and complainant had not met for several years, and, desiring to meet his brother again, he went to St. Louis at the appointed time and learned from him that he was going to New York city in furtherance of some scheme or enterprise which he then had on hand. Nothing whatever was said or intimated at said meeting in regard to complainant's becoming in any manner connected with said road. Respondent advised him of the difficulties he had been laboring under for the want of more means, and he volunteered to express the belief that he could procure for respondent *at* the money he needed in New York. Having made fruitless efforts in that direction himself and failed in the accomplishment of his object, respondent very seriously doubted complainant's ability to effect anything, but told him he would be glad if — could do so. After he arrived in New York complainant wrote to re-
61 spondent for information about the road, the country, &c., which was sent to him; but, as he expected, nothing ever came of it.

And he denies that the complainant went to New York, as alleged, at his suggestion or solicitation, or that there is any foundation for the allegation in that behalf in said bill other than the facts hereinabove stated.

Defendant further represents that soon after complainant had gone to New York in the fall of 1881, as hereinbefore alleged, he received a letter from him stating that he had not succeeded in accomplishing anything in New York, referring to his personal interests, and was out of money and requested defendant to give him employment. Respondent answered his letter declining to employ him. Soon thereafter he received another letter from complainant importuning him to employ him and proposing to work for seventy-five dollars per month for the sake of obtaining a support for his family. Respondent did not wish to employ complainant, because the means at his command *was* extremely limited and he did not need his services, and besides he felt it better for other reasons that he should not do so, but he could not under the circumstances resist his appeal and he wrote to him to come to Washington at once, which he did and went to work at the aforesaid salary proposed by himself and rendered efficient service. He continued in said service at said salary until the 1st day of December, 1883, when respondent advanced his salary to one hundred dollars per month. It is not true, as alleged, that complainant objected or protested against

the amount at which his salary was fixed; on the contrary, he thanked respondent for advancing it as aforesaid.

Soon after complainant came to Washington and entered into the service of the defendant as aforesaid, and after he learned that defendant had purchased the stock of Vinton Alderman and owned the greater part of the stock of the Washington and Hope Railway Company, he began to importune defendant to sell him a part
62 of said stock, representing that he still had interests in California from which he expected to realize money with which he could pay for the same. Defendant did not wish to sell him the stock or believe that he would be able to pay for the same, but finally, upon his urgent solicitations, consented to sell him thirty-three thousand two hundred and fifty dollars of said stock for the sum of eight thousand dollars, and inasmuch as he was paying interest on his purchase of stock from the said Alderman and was realizing no dividends thereon, he thought it was but just that complainant should pay him interest from the date of said purchase, and so stipulated. It was further agreed that the stock was not to be delivered to complainant until he should have paid therefor. On the day after he had agreed to make said sale defendant wrote and delivered to complainant the memorandum copied in his bill. Said sale was not made in pursuance of any previous agreement or under any other circumstances or with any other understanding than as herein stated. That from that time until some time in the month of January, 1886, when complainant became offended with respondent, the matter of said sale was never mentioned or alluded to between them. Complainant did not during all said time pay or offer to pay a cent on said purchase. And respondent knowing that he had failed to realize anything from his alleged gold mine and without means to pay for the same supposed he had abandoned it and had himself ceased to think of it.

That during said period complainant was in the employment of defendant upon a salary, and while it is true that he rendered valuable and efficient service in the construction and operation of said road it was no more than was rendered by the other employees in their respective stations, and is usually rendered by persons similarly employed on other railroads.

While it is true that complainant and defendant got along harmoniously during said time and frequently consulted together as to such matters concerning the work of constructing and oper-
63 ating said road as is usual and necessary for persons engaged in such duties to do, it is not in any manner true that they ever consulted together as persons jointly interested in the property or stock of said company, nor was it ever understood or agreed in the remotest degree either by complainant or this respondent that complainant's interest in said property was one-third thereof and defendant's interest two-thirds, as alleged in said bill. Respondent never before the month of February, 1886, when such a claim was for the first time set up by complainant as hereinbefore stated, heard, or thought of such a state of affairs as that alleged.

It is not true that respondent consulted with complainant as a

joint owner or as one jointly interested in said property as to the policy of extending said road or widening the gauge thereof. It was a matter of much public concern at Washington, where the principal office of said company is located, to have the road extended, and such extension had been contemplated by respondent and the directors of said company long before complainant came to Washington. The delay therein was only caused by want of the resources necessary to prosecute the work. In the summer of 1882 respondent ascertained that the St. Louis, Iron Mountain and Southern Railway Company would aid him in extending the road, and it was at once determined to proceed with the extension thereof. This purpose was the subject of frequent conversations and consultations among the directors, by whose action and co-operation the changes that were effected in the organization of the corporation, with the view to such extension, were made. Complainant was not a member of the directory and was not consulted by the respondent or any one else, so far as he knows, as to the policy of the extension. As to the matter of the widening of the gauge of said road it was determined upon by respondent, as he now remembers, during an interview with R. S. Hays, the first vice-president of the St. Louis, Iron Mountain and Southern Railway Company, at St. Louis, in the summer of 1882, and when complainant was at Washington, Arkansas, several hundred miles away.

64 Further answer-, defendant says it is not true that he, acting for himself and complainant, entered into a construction contract with his codefendants, and he states the facts in that behalf to be that after the acquisition by the Arkansas and Louisiana railway of the property and franchises that had formerly belonged to the Washington and Hope Railway Company, and after it had been determined that said road should be extended the directors looked exclusively to respondent for carrying said purpose into effect, and in order to enable as well as to induce him to do so a construction contract was entered into between respondent and his codefendant, the terms of which will presently be fully set forth; that prior to the making of said contract respondent was a director in said company, and knowing that he could not lawfully enter into contract with the company while holding that position he withdrew from the directory, and the complainant, who was then and at the time said contract was entered into a director in said company, well knew and understood the purpose for which respondent withdrew from the directory.

That on the 22nd day of May, 1883, a contract was entered into by and between respondent, acting solely and exclusively for himself and his codefendant, by the terms of which he undertook and agreed to change the gauge of said road, to lay the same with a heavy iron rail, to build depots, equip the road with sufficient rolling-stock, and to extend the same, and to assume and pay all debts and liabilities of said company, amounting to near seventy thousand dollars, in consideration of which said company agreed to convey to respondent the lands donated to it by the State, amounting to about twenty thousand acres, to issue to him stock to the amount of $10,000 per

mile on that part of the line between Washington and Hope and $20,000 per mile on the residue of the road, said stock to be issued and delivered to respondent as said road was completed and accepted in sections of one mile, and first-mortgage bonds in the sum of fifteen thousand dollars per mile to be issued and delivered to him as said work progressed and was completed and accepted in sections of five miles, and to lease said road and the revenues and
65 income thereof to respondent for the period of five years. A copy of said contract is herewith filed, marked Exhibit "H."

As before stated, complainant was at the time said contract was entered into a director in said company, some shares of stock having been issued in his name in order to qualify him to act in that capacity, and he was present at the time said contract was entered into, had full knowledge of the terms thereof, and voted upon and in favor of the resolutions adopted by the board authorizing and ratifying the same.

Respondent further represents that he made arrangements with the St. Louis, Iron Mountain and Southern Railway Company for money and material with which to extend and make the changes in said road contemplated in his contract with his codefendant, and as security for said money and material he hypothecated the stock and bonds issued to him by his codefendant and assigned for the benefit of said company a half interest in said construction contract to one George C. Smith, as shown by the endorsement on Exhibit H hereto.

There has been issued to respondent, under the provisions of said contract, one hundred thousand dollars of the stock of said company and two hundred and forty thousand dollars of bonds, all of which have been hypothecated to the St. Louis, Iron Mountain and Southern Railway Company, as hereinbefore alleged, and with the money and material so obtained respondent had extended said road to Nashville, in Howard county, Arkansas, has converted the same into the standard gauge and has replaced the iron on said track with a heavy and better quality of iron.

And respondent alleges that at the time said contract was entered into between him and his codefendant, and during all the negotiations for means with which to carry on said work, and during the progress of said work there was never in his mind any thought of associating complainant with him in said contract, nor was there ever the slightest intimation on complainant's part that he had or expected to have any interest whatever therein. Complain-
66 ant well knew that he could not legally, being a director in said company, be a party personally to said contract. He knew that respondent had withdrawn from the directory in order that he might be enabled lawfully to enter into said contract; and he likewise knew that if it had been the intention to associate him with respondent in the contract there had been no obstacle to his withdrawing from the directory as respondent had done and becoming a party thereto.

And respondent further represents that he is and has since the execution of said contract been in the possession of said road as

lessee thereunder; that he had administered the revenues thereof with great economy, applying every dollar of the earnings to the construction and equipment of the road and property, saving a small salary of two hundred dollars per month, which he has allowed himself for the support of his family; that it is not true that he has used the earnings of the road for the payment of the travelling expenses or any other expenses of his family, or in building or adding to his residence; or that he has ever at any time overdrawn the amount of said salary or diverted the earnings of the road or any part thereof from the purposes aforesaid, but, on the contrary, he has much of the time withdrawn less than his salary.

He has likewise caused an account to be kept of the earnings and of the expenditures in constructing, equipping, and operating the road, and the books now show correctly and in detail all of the earnings and disbursements of the road, and on what account the same were made and the cost of each addition to said road since it has been in respondent's possession, and any accountant can obtain within a very short time an exact knowledge from his books of the past and present financial condition thereof. He has been thus particular in keeping said accounts and in separating the same from his personal and family expenditures, because he desired to know at all times the exact financial condition of the road, and deemed a rigid economy in the administration of its finances as essential to the successful performance of his contract with his codefend-
67 ant and with its predecessor, the Washington and Hope Railway Company, and not because he doubted his right to apply the earnings as he might see fit under the terms of his several contracts with said companies, having due regard for the claims of creditors and those parties who were furnishing him the money and material with which to carry on said work.

It is not true that respondent has caused any entries either of debit or credit of the sum due the said Vinton Alderman for the purchase of his stock to be made in the books of said company; said account, as well as all the other accounts referred to by the complainant in said bill, are entered in respondent's private books of account. It is true that respondent has paid the said Alderman about the sum of five thousand five hundred dollars of said indebtness. Said payments were not made out of the earnings of the road except about $2,900, which has been paid out of the earnings since said road has been held by him as lessee, and respondent does not and has never doubted his right to so apply said earnings. It is not true that the credit of forty-seven hundred and thirty-two dollars and fifty cents realized from the sale of said iron, fish plates, spikes, and cars was entered upon the books of said company or that said material ever belonged to the Washington and Hope Railway Company. Respondent purchased said material from the county of Shelby, in the State of Tennessee, before he had entered into the contract with the said company, and paid for the same with his own means. He had never charged the same to said company or received a credit therefor. Said material belonged to him, and the proceeds of the sale thereof was properly entered in his books of ac-

count. The allegations of said bill as to the assets of the Washington and Hope Railway Company are not true. The alleged bonus notes of six thousand dollars were a part of the consideration enuring to respondent under his contract to construct said road. Said notes had been endorsed and negotiated for the purchase of material that entered into the construction of said road, and part of
68 them had been paid when complainant came to Washington. The sum realized from the sale of said cars, spikes, bolts, and other material, amounting to —— dollars, was in part paid to the St. Louis Bolt and Iron Company for the purchase-money of said material. The amount realized from the sale of said lands was about five thousand dollars, and was paid out for the rails. Said lands and the proceeds thereof belonged to respondent, though it is true that he applied the same as alleged to the construction of said road and the payments of debts thereby incurred, and there were no net earnings derived from said road in the year 1882. All of the earnings for said year had been consumed in the repairs of the road and its equipment. It is not true that the citizens of the county of Howard donated said lands at Nashville to respondent's codefendant or that he holds said lands or any other lands in trust for said company or for complainant or that either of them has any interest legal or equitable in any lands held by respondent; nor is it true that respondent made the alleged contract with the Pan Electric Telephone Company for the benefit of said company or that it had or has any interest whatever in said contract. The truth in that behalf is that respondent purchased four instruments from said telephone company for which he paid thirty-three dollars a piece, and erected one of them at Washington and one of them at Nashville. He is further advised that as to said matters wherein complainant charges that defendant has appropriated the property of his codefendant, said company is capable of and is the proper party to seek redress, and doubtless would have done so long since if there had been any foundation for the charge made by complainant, for all of said transactions and dealings have been done openly, and the directors of said company have had full knowledge thereof.

Defendant further says that in the month of February, 1886, and after complainant had begun to assert his claims to an interest in said road and property, he began to threaten defendant with litiga-
gation and employed attorneys to bring suit against defend-
69 ant, and in consequence thereof defendant did discharge him from his employment as alleged, and when he demanded to see the defendant's private books and accounts he denied him access thereto as alleged and as he believes he had the right to do. It is also true that defendant requested the secretary of his codefendant not to permit him to have the records of the company, not that he feared for complainant to see what was contained in said books and records, but because he apprehended that complainant would attempt to make an improper use of the same. It is also true that defendant did demand that complainant surrender the passes that had been procured for him by respondent from other railroad companies in consequence of his connection with said road, and upon

his refusal to do so warned him that if he attempted to use them he would advise the railroad companies by whom they had been issued.

Defendant did this because it is usual in such cases for the recipient of passes to surrender the same, and it would have been an improper and dishonest abuse of the confidence of such companies to have permitted complainant to continue to use said passes as complainant well knew, but it is not true as was well known to complainant that respondent ordered the conductor to demand and collect fare for a nurse in charge of complainant's child; on the contrary, defendant instructed the conductor to pass complainant and all members of his family without charge, but not to permit him to pass other persons. The only foundation for such charge, which is so colored as to amount to a deliberate and gross misrepresentation of complainant, is the fact that the conductor collected the fare and was by defendant as soon as he learned the circumstances ordered to and did offer to refund it to complainant, all of which was explained to and was known by complainant prior to the institution of this proceeding. Defendant, further answering, alleges that the original construction and the extension of said road and the change in the gauge thereof has been effected by and through his efforts and the negotiations by him set on foot for the purpose of raising the means necessary to accomplish that result. While he has at all times had the full and hearty co-operation of the directors in whatsoever he thought necessary to be done by them, said road has been constructed and equipped by his sole and unaided efforts.

He has at all times exercised absolute and unqualified control of said road and everything appertaining to it and never at any time recognized in complainant any right to be consulted as to the management thereof. The same is true as to all the negotiations for money and material for equipping and extending said road, and complainant has had full knowledge of all the facts and has acquiesced in and by his conduct recognized and acknowledged respondent's complete and exclusive control of said road and the rights claimed and exercised by him as hereinbefore alleged.

It is not true that respondent was ever recognized by the directors of the Washington and Hope Railway Company or of his codefendant as a trustee for the complainant in respect of said property or the construction contract, or that any officer of either of said companies ever heard of the claims advanced by him in that respect or of any claim on his part of an interest of any kind in said property until a very short time prior to the institution of this proceeding, and respondent does not believe that complainant himself entertained such views until a very short time prior thereto. If he did he never at any time by word or act manifested it; and it is a fact well known to all who know the complainant that he is of an aggressive temper, disposed to have his way in all matters with which he is connected, and ready on all occasions to assert what he deems to be his rights; and while, as hereinbefore alleged, respondent did not deem it necessary to do so, he has for the reasons set forth so conducted all the business connected with said road so as to

keep it separate from his private interests and has had the books and accounts so kept that they furnish a full history of all the transactions in regard thereto, and if complainant were entitled to
71 the rights that he asserts they have been fully preserved and protected and are not in any manner or degree impaired by respondent's management of said property; but respondent denies that he has or ever had any interest in said property or in the contracts made by respondent with said company, and he is advised that such right as he might have acquired to the stock which respondent agreed as hereinbefore alleged to sell him by paying the price agreed upon between them are stale and barred by lapse of time and the failure of the complainant to perform the condition upon which he was to acquire said stock, and he here pleads the staleness of complainant's claim in bar of the relief sought in said bill.

And having fully answered so far as he is advised is material for him to answer defendant prays that he be hence discharged, with his reasonable cost, and he will ever pray, &c.

A. B. WILLIAMS,
J. D. CONWAY,
J. M. MOORE,
For Defendant.

The defendant, John D. Beardsley, being duly sworn, says that the allegations of the foregoing answer so far as the same are based on his knowledge are true, and so far as the same are based on information and belief he believes the same to be true.

J. D. BEARDSLEY.

Subscribed and sworn to before me the 1st day of April, 1886.

RALPH L. GOODRICH,
Com'r U. S. Cir. C't E. D. A.

(Endorsed:) Filed April 1st, 1886. Ralph L. Goodrich, clerk.

72 Which exhibit to answer of J. D. Beardsley is as follows:

A.

WASHINGTON, ARK., *Sep.* 18*th*, 1882.

At a meeting of the stockholders called at the office of the company, on the 18th day of September, A. D. 1882, by the president, for the purpose of taking into consideration a resolution of the board of directors for selling the railroad owned and operated by this company, with the appurtenances and all its real and personal property and franchises, to the Arkansas and Indian Territory Railway Company, the following stockholders were present, to wit:

W. H. Carruth, W. P. Hart, A. B. Williams, J. D. Conway, H. B. Holman, John D. Beardsley, Thomas H. Simms, J. K. Jones, and Robert B. Williams, and thereupon the following resolution, adopted by the board of directors at a meeting held on the 18th day of Sep-

tember, A. D. 1882, was submitted to this meeting: Resolved, That this company will enter into an agreement with the Arkansas and Indian Territory Railway Company for selling to said company its railroad, including its right of way, road-bed, tracks, side tracks, switches, turn-tables, tanks, depot buildings, freight-houses, rolling-stock of every kind, and all material for operating, repairing, or running said railroad; all the lands donated by the State of Arkansas to this company under an act of the General Assembly entitled "An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, A. D. 1879, and all other estate, real and personal, belonging to this company, and all rights, privileges, and franchises to this company belonging, including the exclusive right to own, operate, and maintain said railroad, on the following terms and considerations, namely: The Arkansas and Indian Territory Railway Company shall assume and discharge all debts and liabilities of every nature due or to become due and owing by this company, and shall issue to this company one hundred thousand dollars of its paid-up capital stock.

Resolved further, That the president of this company be,
73 and is hereby, authorized and directed to execute the agreement aforesaid, and all such deeds or other instruments of conveyance as may be necessary to effect a full and complete transfer of all the aforesaid property to the Arkansas and Indian Territory Railway Company, to be subject, however, to the approval and confirmation of stockholders owning two-thirds of the stock of this company, at a meeting to be called for that purpose; and thereupon J. D. Beardsley offered the following resolution:

Resolved, That the agreement for selling the line of railroad belonging to this company, together with all its property, lands, tenements, and franchises, to the Arkansas and Indian Territory Railway Company, and the deed of transfer and conveyance which has been executed in behalf of this company by William H. Carruth, its president, under and by virtue of the authority of a resolution of the board of directors of said company and have here — submitted to this meeting for approval and adoption be, and the same is hereby, approved and adopted, and it is ordered that the secretary endorse a copy of this resolution on the deed executed by this company to the Arkansas and Indian Territory Railway Company.

On motion of W. P. Hart it is ordered that the contract and instrument of conveyance executed by W. H. Carruth, president, be entered at length upon the minutes, and which is in words and figures as follows, to wit:

Memorandum of an agreement made and entered into this the 18th day of September, A. D. 1882, by and between the Washington and Hope Railway Company, a corporation organized and existing by virtue of the laws of this State, party of the first part, and the Arkansas and Indian Territory Railway Company, a corporation organized and existing by virtue of the laws of this State, party of the second part.

Whereas the party of the first part owns and operates a line of

railroad between the towns of Washington and Hope, in Hempstead county, in said State, and the party of the second part has been organized and incorporated for the purpose of constructing a line of railroad from the town of Washington aforesaid, in a north-
74 westerly direction to the line between this State and the Indian Territory, and the said railroads will form continuous and connecting railroads with each other.

Whereas the party of the first part is authorized by the laws of this State to sell and the party of the second part to purchase and operate the line of railroad owned by the party of the first part, and it is believed a sale will be beneficial to the stockholders of each corporation and to the public: Now, therefore, this agreement witnesseth that the party of the first part, in consideration of the issue to it by the party of the second part of one hundred thousand dollars of its paid-up capital stock and of the agreements of the party of the second part hereinafter contained, have granted, bargained, and sold, and doth by these presents grant, bargain, sell, assign, transfer, and convey unto the party of the second part, and to its successors and assigns, all and singular its railroad, including its rights of way, road-bed and tracks, switches and side tracks, turntables, water-tanks, depot buildings, freight-houses, engines, tenders, cars, trucks, and all rolling-stock of every kind, and all material of every description on hand for the purpose of operating, repairing, or running said railroad, all the lands donated by the State of Arkansas to the party of the first part by an act of the General Assembly — "An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, 1879, and more particularly described in a certain deed of conveyance executed by Thomas J. Churchill, Governor of the State of Arkansas, on the 30th day of January, A. D. 1882, and which is duly recorded on pages 494 and 495, in vol. No. 13, of the Record of Deeds and Mortgages, in the office of the circuit clerk and *ex officio* recorder of Hempstead county; and also such lands as may hereafter be conveyed to the party of the first part by the Governor of the State of Arkansas under said act of the General Assembly aforesaid, together with all other personal property and all real estate owned by the party of the first part and situated in Hemp-
75 stead county, in the State Arkansas or elsewhere, and all the rights, privileges, and franchises conferred upon the party of the first part by the general statutes of this State for the incorporation of railroad companies, including the exclusive right to own, operate, and maintain a railroad between the towns of Washington and Hope, in Hempstead county aforesaid; to have and to hold the above-described property, franchises, lands, and appurtenance unto the said party of the second part, and its successors and assigns. And the party of the second part for and in consideration of the aforesaid conveyance hereby agrees that it will pay off and discharge all debts and liabilities of every kind due and owing or to become due by the party of the first part.

In testimony whereof the directors of the several corporations parties hereto have caused these presents to be signed in the names

thereof by their respective presidents and their several corporate seals to be affixed hereto this 18th day of September, A. D. 1882.

[SEAL.] WASHINGTON & HOPE RAILWAY COMPANY,
By W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

[SEAL.] ARKANSAS AND INDIAN TERRITORY RAILWAY COMPANY,
By H. B. HOLMAN, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

And the aforesaid resolutions of the board of directors and the agreement executed in pursuance thereof having been read and duly considered a vote was taken upon the resolution to approve and adopt the resolution and contract for the sale of the road property and franchises of this company to the Arkansas and Indian Territory Railway Company, which vote resulted as follows: J. D. Beardsley cast 3,992 shares of stock, being 3,992 votes for said resolution; William P. Hart cast one share of stock, being one vote for said resolution; W. H. Caruth cast one share of stock, being one vote for said resolution; A. B. Williams cast one share of stock, being one vote for said resolution; Henry B. Holman cast one
76 share of stock, being one vote for said resolution; Joel D. Conway cast one share of stock, being one vote for said resolution; Thomas H. Simms cast one share of stock, being one vote for said resolution; Jas. K. Jones cast one share of stock, being one vote for said resolution, and Robert B. Williams cast one share of stock, being one vote for said resolution, being 4,000 votes, representing 4,000 shares of stock in said railway company which were cast on the adoption of said resolution. No votes were cast against the adoption thereof. And the aforesaid votes representing all the stockholders of said company, and said vote being unanimous, the resolution approving the sale and transfer of the railroad, the personal property, the lands, and tenements and franchises of this company to the Arkansas and Indian Territory Railway Company was declared duly adopted.

And thereupon Thomas H. Simms offered the following resolution:

Whereas this company has sold and conveyed to the Arkansas and Indian Territory Railway Company all its property, real and personal, and its franchises in consideration of one hundred thousand dollars of the full-paid capital stock of the Arkansas and Indian Territory Railway Company and the agreement of said company to assume and pay the debts and liabilities of this company: Therefore

Be it resolved, That the assets of this company, consisting of the aforesaid stock of the Arkansas and Indian Territory Railway Company, be distributed by the secretary among the stockholders in proportion to the amount of stock by them severally owned, and

that its corporate organization be, and is hereby, dissolved: and a vote being taken on said resolution resulted as follows: J. D. Beardsley cast 3,992 shares of stock, being 3,992 votes for said resolution; W. P. Hart cast one share of stock, being one vote for said resolution; W. H. Carruth cast one share of stock, being one vote for said resolution; A. B. Williams cast one share of stock, being one vote for said resolution; H. B. Holman cast one share of stock, being one vote for said resolution; J. D. Conway cast one share of stock, being one vote for said resolution; Thomas H. Simms cast one share of stock, being one vote for said resolution; James K. Jones
77 cast one share of stock, being one vote for said resolution, and Robert B. Williams cast one share of stock, being one vote for said resolution; and the aforesaid votes, representing in the aggregate 4,000 shares of stock, which is all the stock held by all the stockholders of this company, said resolution was declared to be unanimously adopted.

On motion of W. P. Hart this meeting adjourned *sine die*.

H. W. CARRUTH,
President W. & H. R'y Co.

Attest: R. B. WILLIAMS,
Secretary W. & H. R'y Co.

"B."

OFFICE OF THE ARK. AND IND. TERRITORY R'Y CO.
WASHINGTON, ARK., *Sep. 18th*, 1882.

On this 18th day of September, 1882, the board of directors of the Arkansas and Indian Territory Railway Company met at the office of said company pursuant to adjournment.

Present: Directors H. B. Holman, president; W. H. Carruth, W. P. Hart, J. D. Conway, John D. Beardsley, and Paul F. Beardsley, and Secretary R. B. Williams.

President Holman stated that this meeting of the board was for the purpose of considering a proposition to purchase the property, rights, privileges, and franchises of the Washington and Hope Railway Company, whereupon Director W. H. Carruth offered the following resolution, to wit:

"Resolved that this company will enter into an agreement with the Washington and Hope Railway Company for purchasing from said company its railroad, including its right of way, road-bed, tracks, side tracks, switches, turn-tables, depot buildings, water-tanks, rolling-stock of every description, and all material for operating, repairing, and running said railroad; all the lands donated by the State of Arkansas to said company under an act of the General Assembly entitled 'An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company,' approved
March 5th, A. D. 1879, and all other estate and property, real
78 and personal, belonging to said company, and all rights, privileges, and franchises to said company belonging, including the exclusive right to own, operate, and maintain said railroad, upon the following terms and conditions, namely:

This company shall assume and discharge all debts and liabilities of every nature due and to become due and owing by said Washington and Hope Railway Company, and shall issue to said company one hundred thousand dollars of the paid-up capital stock of this company.

Resolved further, That the president of this company be, and he is hereby, authorized and directed to execute all contracts and agreements necessary to be executed by this company in and about said purchase, to be subject, however, to the approval and confirmation of stockholders owning two-thirds of the stock of this company, at a meeting to be called for that purpose, and upon the approval of such contract and agreement by the stockholders in the manner aforesaid, and the conveyance by the Washington and Hope Railway Company to this company of the aforesaid property and franchises by a good and sufficient deed, the president of this company shall be, and he is hereby, authorized and directed to issue to the Washington and Hope Railway Company one hundred thousand dollars of the paid-up capital stock of the company."

Which said resolution was, on motion of Director Joel B. Conway, unanimously adopted. * * *

On motion of Director W. H. Carruth the board adjourned subject to the call of the president.

H. B. HOLMAN, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

In consideration of the sum of one hundred thousand dollars of the paid-up capital stock of the Arkansas and Indian Territory Railway Company to us delivered, we, the undersigned stockholders of the Washington and Hope Railway Company, hereby ac-
79 knowledge payment and satisfaction for our respective interests in said company.

W. H. CARRUTH.
J. D. CONWAY.
J. D. BEARDSLEY.
THOS. H. SIMMS.
JAS. K. JONES.
A. B. WILLIAMS.
H. B. HOLMAN.
R. B. WILLIAMS.
W. P. HART.

"C."

WASHINGTON, ARK., *May 17th*, 1883.

At a meeting of the stockholders of the Arkansas and Indian Territory Railway Company called at the office of the company on the 17th day of May, A. D. 1883, for the purpose of taking into consideration a resolution of the board of directors for selling the railroad owned and operated by their company, with the appurtenances and all its real and personal property and franchises of said company, to the Arkansas and Louisiana Railway Company, the follow-

ing stockholders were present, to wit: W. H. Carruth, W. P. Hart, A. B. Williams, J. D. Conway, H. B. Holman, J. D. Beardsley, Thomas H. Simms, J. K. Jones, Paul F. Beardsley, and R. B. Williams, who are all of the stockholders of said company; and thereupon the following resolution, adopted by the board of directors at a meeting held on the 1st day of May, 1883, was submitted to this meeting:

Resolved, That the company will enter into an agreement with the Arkansas and Louisiana Railway Company for selling to said company its railroad, including its right of way, road-bed, tracks, side tracks, switches, turn-tables, water-tanks, depot buildings, freight-houses, rolling-stock of every kind, and all material for operating, repairing, or running said railroads all the lands donated by the State of Arkansas to the Washington and Hope Railway Company under an act of the General Assembly entitled "An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, 1879, which said lands were sold by said Washington and Hope Railway Company, together with all the other property, rights, privileges, and franchises of the said Washington and Hope Railway Company, to the Arkansas and Indian Territory Railway Company, on the 18th day of September, A. D. 1882, and all the rights, privileges, and franchises to this company belonging, including the exclusive right to own, operate, and maintain said railroad upon the following terms and conditions, namely: The Arkansas and Louisiana Railway Company shall assume and discharge all debts and liabilities of every nature or to become due and owing by this company, and shall issue to this company one hundred thousand dollars of its paid-up capital stock.

Resolved further, That the president of this company be, and is hereby, authorized and directed to prepare, execute, and deliver the agreement aforesaid for and in behalf of this company and all such deeds or other instruments of conveyance as may be necessary to effect a full and complete transfer of all the aforesaid property to the Arkansas and Louisiana Railway Company, said agreement or other instruments of conveyance to be signed by the secretary of this company and attested by its corporate seal, to be subject, however, to the approval and confirmation of stockholders owning two-thirds of the stock of this company at a meeting to be called for that purpose.

And thereupon J. D. Beardsley offered the following resolution:

Resolved, That the agreement for selling the line of railroad belonging to this company, together with all its property, lands, tenements, and franchises, to the Arkansas and Louisiana Railway Company and the deed of transfer and conveyance which has been executed on behalf of this company by Henry B. Holman, its president, under and by virtue of the resolution of the board of directors of said company and now here submitted to this meeting for approval and adoption be, and the same is hereby, approved and adopted; and it is ordered that the secretary endorse a copy of this resolution on the deed executed by this company to the Arkansas and Louisiana Railway Company.

On motion of Dr. W. P. Hart, it is ordered that the contract and instrument of conveyance executed by H. B. Holman, president, be entered at length upon the minutes, and which is in the words and figures as follows, to wit:

Memorandum of an agreement made and entered into this the 17th day of May, A. D. 1883, by and between the Arkansas and Indian Territory Railway Company, a corporation organized and existing by virtue of the laws of the State of Arkansas, party of the first part, and The Arkansas and Louisiana Railway Company, a corporation organized and existing by virtue of the laws of the State of Arkansas, party of the second part.

Whereas the party of the first part owns a charter and franchises for a line of railroad running from the town of Hope, in the county of Hempstead, in the State of Arkansas, in a northwesterly direction, through the town of Washington, in said county and State, and through the counties of Howard and Sevier, in said State, to a point on the line between the State of Arkansas and the Indian Territory at or near the town of Ultima Thule, Sevier county, Arkansas, about ten miles of which said line of railroad has been constructed and is now in operation, and the party of the second part has been organized and incorporated for the purpose of constructing a line of railroad from the said town of Hope aforesaid in a southeasterly direction, through the counties of Hempstead, Nevada, and Columbia, in said State, to the line between the State of Arkansas and the State of Louisiana, and the said railroads will form continuous and connecting railroads with each other;

Whereas the party of the first part is authorized by the laws of this State to sell and the party of the second part to purchase and operate the line of railroad owned by the party of the first
82 part, and it is believed a sale will be beneficial to the stockholders of each incorporation and to the public: Now, therefore, this agreement witnesseth:

That the party of the first part, in consideration of the issue to it by the party of the second part of one hundred thousand dollars of its paid-up capital stock, the receipt whereof is hereby acknowledged, and of the agreement of the party of the second part hereinafter contained, has bargained, granted, and sold, and doth by these presents grant, bargain, sell, assign, transfer, and convey, unto the party of the second part, and to its successors and assigns, all and singular, its railroad, including its rights of way, road-bed, tracks, switches, and side tracks, turn-tables and water tanks, depot buildings, freight-houses, engines, tenders, cars, trucks, and all rolling-stock of every kind and all material of every description on hand for the purpose of operating, repairing, or running said railroad, all the lands donated by the State of Arkansas to the Washington and Hope Railway Company by an act of the General Assembly entitled "An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, 1879, and more particularly described in two certain deeds of conveyance executed by Thomas J. Churchill,

Governor of the State of Arkansas, one on the 20th day of September, 1881, and the other on the 30th day of January, 1882; the former of which has not been recorded, the latter is duly recorded on pages 495 and 496, in vol. No. 13 of the Record of Deeds and Mortgages, in the office of the circuit clerk and *ex officio* recorder of Hempstead county, and also such lands as may hereafter be conveyed to the said Washington and Hope Railway Company by the Governor of the State of Arkansas, under said act of the General Assembly aforesaid, together with all other personal property and real estate owned by the party of the first part and situated in Hempstead county, in the State of Arkansas, or in any other county in said State or elsewhere;

and all the rights, privileges, and franchises conferred upon
83 the party of the first part by the general statutes of this State for the incorporation of railway companies, or acquired by it by purchase, donation, or otherwise, including the exclusive right to construct, own, operate, and maintain a railroad between the town of Hope, in the county of Hempstead, in the State of Arkansas, and the point hereinbefore mentioned between the line of this State and the Indian Territory.

To have and to hold all and singular the above-described railroad, railroad property, rights, privileges, franchises, lands and appurtenances, and all other property unto the said party of the second part and its successors and assigns forever.

Now, the party of the second part, for and in consideration of the aforesaid conveyance, hereby agrees that it will pay off and discharge all debts and liabilities of every kind due and owing or to become due by the party of the first part, whether the same have been contracted for the purchase of material or property of any kind, or in the construction of the road, road-bed, or buildings, or have been assumed by the said party of the first part, or upon any other account whatever.

Now, the said party of the second part, for and in consideration of the aforesaid conveyance, hereby further agrees that it will cause to be issued and delivered to the party of the first part one hundred thousand dollars of its paid-up capital stock.

In testimony whereof the directors of the several corporations parties hereto have caused these presents to be signed in the names thereof by their respective presidents and their several corporate seals to be affixed thereto, attested by the signatures of their respective secretaries, this the 17th day of May, A. D. 1883.

H. B. HOLMAN,
[SEAL.] *President Arka. & Ind. Ter. R'y Co.*

Attest: R. B. WILLIAMS,
Secretary Ark. & Ind. Ter. R'y Co.

W. H. CARRUTH,
[SEAL.] *President Ark. & La. R'y Co.*

Attest: R. B. WILLIAMS,
Secretary Ark. & La. R'y Co.

84 And the aforesaid resolution of the board of directors and the agreement executed in pursuance thereof having been read and duly considered a vote was taken upon the resolution to approve and adopt the resolution and contract for the sale of the road, property, and franchises of this company to the Arkansas and Louisiana Railway Company, which vote resulted as follows: J. D. Beardsley cast the vote upon 1,392 shares of stock, being 1,392 votes for said resolution; Paul F. Beardsley cast 200 shares of stock, being 200 votes for said resolution; W. P. Hart cast 11 shares of stock, being 11 votes for said resolution; J. D. Conway cast 6 shares of stock, being 6 votes for said resolution; Henry B. Holman cast 2 shares of stock, being 2 votes for said resolution; A. B. Williams cast three shares of stock, being 3 votes for said resolution; R. B. Williams cast three shares of stock, being 3 votes for said resolution; Thomas H. Simms cast one share of stock, being 1 vote for said resolution, and James K. Jones cast one share of stock, being 1 vote for said resolution, being in the aggregate 1,630 votes, representing 1,630 shares of stock in said railway company, which were all of the stock of said company and which were cast on the adoption of said resolution, and no votes were cast against the adoption thereof, and said votes being unanimous the resolution, approving the sale and transfer of the railroad, the personal property, the land and tenements, and franchises of this company to the Arkansas and Louisiana Railway Company, was declared duly adopted.

On the motion of W. P. Hart the meeting adjourned.

H. B. HOLMAN *President.*

Attest: R. B. WILLIAMS, *Secretary.*

85 "D."

WASHINGTON, ARKANSAS, *May 16th*, 1883.

On this day the newly-elected board of directors of the Louisiana Railway Company met at the office of the company, in the town of Washington, in the county of Hempstead, in the State of Arkansas, and proceeded to the permanent organization of said company, by electing W. H. Carruth president, R. B. Williams secretary, W. H. Carruth treasurer, and J. D. Beardsley general superintendent of said company, each of whom having received the unanimous vote of all the directors. A. B. Williams, J. K. Jones, Thos. H. Simms, W. P. Hart, Paul F. Beardsley, Henry B. Holman, Joel D. Conway, W. H. Carruth, and R. B. Williams being present the following among other proceedings were had, to wit: * * *

On motion of Director Thomas H. Simms the following resolution was unanimously adopted:

Resolved, That this company will enter into an agreement with the Arkansas and Indian Territory Railway Company for purchasing from said company its railroad, including rights of way, roadbed, tracks, side tracks, switches, turn-tables, depot buildings, water tanks, rolling-stock of every description, and all material for operating, repairing, and running said railroad, all the lands donated by

the State of Arkansas to the Washington and Hope Railway Company under an act of the General Assembly entitled "An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, 1879, which said lands were sold by said Washington and Hope Railway Company, together with all the other property, rights, privileges, and franchises of the said Washington and Hope Railway Company to the said Arkansas and Indian Territory Railway Company, on the 18th day of September, 1882, and all rights, privileges, and franchises to said Arkansas and Indian Territory Railway Company belonging, including the exclusive right to own, operate, and maintain said railroad upon the following terms and conditions,
86 namely: This company shall assume and discharge all debts and liabilities of every nature due and to become due and owing by said Arkansas and Indian Territory Railway Company, whether the same have been contracted for the purchase of material or property of any kind or in the construction of the road-bed, road, or buildings, or have been assumed by the said Arkansas and Indian Territory Railway Company or have been contracted by said company or upon any other account whatever, and shall issue to said company one hundred thousand dollars of the paid-up capital stock of this company.

Resolved further, That the president of this company be, and is hereby, authorized and directed to execute all contracts and agreements necessary to be executed by this company in or about said purchase, to be subject, however, to the approval and confirmation of stockholders owning two-thirds of the stock of this company, at a meeting to be called for that purpose, such contract and agreement to be signed by the president and secretary of this company and attested by its corporate seal; and upon the approval of such contract and agreement by the stockholders of this company in the manner aforesaid, and the conveyance by the Arkansas and Indian Territory Railway Company to this company of the aforesaid property and franchises by a good and sufficient deed, the president of this company shall be, and is hereby, authorized and directed to cause to be issued to the Arkansas and Indian Territory Railway Company one hundred thousand dollars of the paid-up capital stock of this company. * * *

On motion of director J. D. Conway the meeting was adjourned.

W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

87 "E."

In consideration of the sum of one hundred thousand dollars of the paid-up capital stock of the Arkansas and Louisiana Railway Company to us delivered we, the undersigned stockholders of the Arkansas and Indian Territory Railway Company, hereby acknowledge payment and satisfaction in our respective interests in said company.

Witness our hands this 17th day of May, A. D. 1883.

W. H. CARRUTH.
J. D. BEARDSLEY.
J. D. CONWAY.
H. B. HOLMAN.
THOS. H. SIMMS.
JAMES K. JONES.
A. B. WILLIAMS.
R. B. WILLIAMS.
W. P. HART.
P. F. BEARDSLEY.

"E." 2.

WASHINGTON, ARK., *November 7th*, 1879.

On this day the board of directors of the Washington and Hope Railway Company met at the office of A. B. and R. B. Williams, in the town of Washington, in the county of Hempstead, in the State of Arkansas, pursuant to the call of the president.

Present: W. H. Carruth, president; R. B. Williams, secretary; Thos. H. Simms, treasurer, and Directors W. P. Hart, J. K. Jones, J. D. Conway, and H. B. Holman.

The president, as chairman of the executive committee of this board, on behalf of said committee verbally reported that they had, on the 10th day of September, 1879, entered into a contract and agreement with Major J. D. Beardsley for the completion, equipment, and operation of the railroad contemplated by this company, as they had been directed to do, and submitted to the board the "articles of agreement" entered into as aforesaid; which said articles of agreement, having been carefully read and considered by this board, on motion of Joel D. Conway the same were ratified and approved and ordered to be signed in duplicate by the president, attested by the secretary, and the corporate seal of this company affixed thereto, said secretary retaining one copy thereof and the said J. D. Beardsley retaining the other.

88

On motion of Director W. P. Hart, the secretary was ordered to enter said articles of agreement at length upon the records of this company as part of the minutes of this meeting.

"Articles of agrement entered into on this 10th day of September, A. D. 1879, by and between the Washington and Hope Railway Company of Hempstead county and the State of Arkansas, party of the first part, and J. D. Beardsley, of Cairo, West Virginia, party of the second part.

The Washington and Hope Railway Company, having constructed a road-bed for a narrow-gauge railway from Washington to Hope, in said county of Hempstead and State of Arkansas, and being desirous of having the same completed and operated, to that end hereby agree and contract with J. D. Beardsley, party of the second part, to procure and hold in trust for him, the said Beardsley, and

for such persons as he may associate with him, all of the stock in said Washington and Hope Railway Company, held and owned by any person whomsoever, which said stock shall be held by the board of directors of said Washington and Hope Railway Company in trust for the use and benefit of said J. D. Beardsley and his associates until he shall have completed said Washing and Hope railway and made the same a first-class narrow-gauge railroad, when said stock shall vest absolutely in and become the property of said J. D. Beardsley and his associates or their assignees.

In the meantime, under the conditions hereinafter expressed and until the forfeiture made by said J. D. Beardsley and others according to the conditions hereinafter recited, said trustees shall
89 collect and turn over to said J. D. Beardsley and his associates all of the dividends, issues, and profits upon said stock arising from the operation of said road:

Provided, That in the transfer of said stock a sufficient quantity of stock shall be retained by at least four members of the present board of directors of said Washington and Hope Railway Company to qualify them to hold the position of directors *on* said company; and provided further, that any of the stockholders may retain their stock by promptly paying up the remainder of said stock.

And it is further agreed that said party of the first part shall procure personal obligations of citizens who, in the opinion of the board of directors, are solvent, obligating themselves to pay to said J. D. Beardsley the aggregate sum of ten thousand dollars ($10,000), one-half of which sum shall be due and payable ten days after said railway shall have been completed, ironed, and accepted by the board of directors as a first-class narrow-gauge railway, which completion shall not be beyond four years from the date hereof, and the other half shall be due and payable one year thereafter.

The said J. D. Beardsley agrees and contracts for himself and his associates and their heirs and assigns that he or they will at once proceed to put upon the road-bed of said Washington and Hope railway ties suitable for a first-class narrow-gauge railway, said ties to be of either white or post oak timber and not less than — feet long and not less than — inches in width and not less than — inches in thickness, and to be laid not more than — inches from center to center of said ties on an average, and that he or they will put wooden rails upon the same and securely spike them to said ties and will use all possible diligence in getting said road ready for the transportation of freight and passengers.

He also undertakes and obligates himself and others as aforesaid to provide said road with sufficient rolling stock to transfer promptly all freight and passengers offering for transportation, and he guarantees prompt transportation of freight and the transporta-
90 tion of passengers within one hour from Washingten to Hope or from Hope to Washington, inclusive of necessary stoppages, and he further obligates himself to run at least one passenger car daily each way in close connection with the passenger trains on the St. Louis, Iron Mountain and Southern railway.

Said J. D. Beardsley further obligates himself as aforesaid to con-

struct proper crossings, according to law, at all points where public roads shall cross the line of said Washington and Hope railway, and to build a depot building at Washington sufficient for the storage and safe keeping of all freight committed to the care of said road, and, further, that said J. D. Beardsley and his associates shall be answerable and responsible to all persons who may sustain damage from any cause whatever arising out of the operation and running of said railway, whether operated by steam or otherwise.

It is, however, distinctly understood and agreed by and between the parties hereto that the putting down of wooden rails is a temporary arrangement, and that said wooden rails shall be replaced with iron rails of not less than twenty pounds weight per yard, and that said J. D. Beardsley hereby covenants and agrees to replace said wooden rails as rapidly with iron rails as aforesaid.

It is believed that this may be done in two years from the date of this contract, but if the said party of the second part should find it impracticable to iron the whole of said road within two years the party of the first part agrees that if one-third of the same is laid with iron rails within two years from the date of this contract that then, at the end of said two years, the said party of the first part will grant an extension of one year to said J. D. Beardsley, and if at the expiration of three years two-thirds of said road shall be laid with iron as aforesaid the party of the first part shall grant the party of the second part another extension of time for one year, in which time said road shall be completed with iron as aforesaid, with all necessarys witches, turn-tables, depots, &c., and shall be equipped with one good six-
91 ton locomotive and cars necessary to transport all freight offering for transportation with promptness, and also at least one good passenger coach for the transportation of passengers, and that at least one passenger train shall be run each way each day in close connection with the passenger trains on the St. Louis, Iron Mountain and Southern railway. It is also distinctly understood and agreed between the parties hereto that if at the expiration of two years from the date of this contract said J. D. Beardsley and others shall have failed to iron one-third of said road as above provided, then and in that event it shall be at the option of said party of the first part to declare this contract at an end and without further notice to take immediate possession of said road and equipments, and by said forfeiture all the property and estate which said J. D. Beardsley and others may have acquired in said road by virtue of this contract shall revest in and become the absolute property of said company as originally organized, and if at the end of three years from this date two-thirds of said road shall not have been ironed as hereinbefore provided, then it shall be at the option of the party of the first part to declare this contract at an end, and all the rights and property of said J. D. Beardsley and others shall vest absolutely in and become the property of said party of the first part as originally organized, and they may take possession of the same without notice to said Beardsley and his associates, and if at the end of four years from the date hereof the said party of the second part shall not have completed the entire length of said road, with iron rails,

switches, turn-tables, depots, rolling stock, and other equipments, as hereinbefore provided, as a first-class narrow-gauge railway it shall be at the option of party of first part to declare this contract at an end, and they may without further notice take possession of said railway, and all the property, rights, and estate which said party of the second part may have acquired by virtue of this contract shall vest in and become the absolute estate of the party of the first part as originally organized: Provided,
92 however, and it is hereby distinctly understood and agreed, that said party of the second part shall have the right forthwith and shall remove the iron rails, spikes, and locomotive, if there be one, from said railway; but should the said party of the first part desire to purchase said iron and locomotive they shall have the right to take the same at the then market value of such iron and spikes and the freight thereon, and for the locomotive, if there be one, at the maker's price at the time, less a fair allowance for use and wear, and if said prices cannot be agreed upon they shall be ascertained by arbitration.

And the party of the second part further covenants and agrees that in the event of his failure to put down the rails as fast as hereinbefore provided he will not attempt to prevent or obstruct the parties of the first part in taking possession of the road and rolling stock, and that he will not construe the title to the iron and locomotive to justify him in holding the road or delaying the delivery thereof, but that if the parties of the first part should not wish to purchase said iron, spikes, and locomotive, then that he will remove said iron and locomotive, if there be one, within one week after receiving notice so to do, leaving the road-bed and ties and wooden rails and all other rolling stock still upon said road and in good condition.

In testimony whereof W. H. Carruth, as president of the Washington and Hope Railway Company, and Robert B. Williams, as secretary of the same, have, by order of the board of directors of said company, hereunto set their hands and affixed the seal of said company on the part of the party of the first part, and J. D. Beardsley, for himself and those he may associate with him, has hereunto set his hand and private seal on the part of the party of the second part.

Signed and sealed in triplicate on this the day and date first above written, at Washington, Ark.

W. H. CARRUTH,
President W. & H. R'y Co.

Attest: R. B. WILLIAMS,
[SEAL.] *Secretary W. & H. R'y Co.*

J. D. BEARDSLEY. [SEAL.]

93 On motion of Director Joel B. Conway, the board adjourned, subject to the call of the president.

W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

"F."

WASHINGTON, ARKANSAS, *March 7th*, 1882.

This being the day fixed by the by-laws of this company for a regular meeting of the board of directors thereof, the board met at the office of A. B. & R. B. Williams, in the town of Washington, in the county of Hempstead, in the State of Arkansas.

Present: W. H. Carruth, president; R. B. Williams, secretary; Thos. H. Simms, treasurer; J. D. Beardsley, superintendent, and Directors W. P. Hart, A. B. Williams, H. B. Holman, J. K. Jones, and J. D. Conway.

The following, amongst other, proceedings were had, to wit: * * *

On motion of Director A. B. Williams, the following resolution was unanimously adopted, to wit: Whereas a committee appointed by the board of directors has examined the road-bed, tracks, culverts, bridges, turnouts, rolling stock, &c., of the Washington and Hope railroad, and has reported thereon:

Therefore resolved, That it is the sense of this board that said road has been completed according to the contract entered into with J. D. Beardsley, and that — road was so completed on the 1st day of January, A. D. 1881, and it is now received by this board as of that date.

The president then submitted to the board an agreement written and signed by J. D. Beardsley, which is in the words and figures following, to wit.

WASHINGTON, ARK.

W. H. Carruth, president.

DEAR SIR: Referring to the deficiency in the $10,000 bonus
94 which the president and directors of the Washington and Hope Railway Company undertook to make up, as set forth in their contract with me for the construction of the said road, I have to say I expect the president and directors to see that the lands donated to the road by Gen'l Royston and others are deeded, and also to use their best endeavors to secure whatever subscriptions the road is equitably entitled to. Beyond this I do not expect anything more from them, and I hereby relinquish any claim for the amount deficient on the bonus.

J. D. BEARDSLEY.

On motion of Director W. P. Hart, Thos. H. Simms was appointed a committee of one to see Gen. G. D. Royston and Judge John R. Eakin and procure deeds from them for the lands which they had agreed to donate to this company.

On motion of J. D. Conway, the board adjourned, subject to the call of the president.

W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

"G."

WASHINGTON, ARKANSAS, *June 29th*, 1881.

On this day the board of directors of the Washington and Hope Railway Company met at the office of A. B. & R. B. Williams, in the town of Washington, in the county of Hempstead, and State of Arkansas, pursuant to the call of the president.

Present: W. H. Carruth, president; R. B. Williams, secretary; Thos. H. Simms, treasurer; J. D. Beardsley, superintendent, and Directors J. K. Jones, A. B. Williams, W. P. Hart, H. B. Holman, and J. D. Conway.

Director A. B. Williams, as chairman of the committee appointed to examine and value the property of this company, reported
95 orally that they had performed their labors to the best of their judgment and ability and had fixed the aggregate value of said property at the sum of one hundred thousand dollars.

On motion of Director W. P. Hart, the report of said committee was received and adopted and the committee discharged.

On motion of Director A. B. Williams, the secretary was ordered to issue to J. D. Beardsley stock in addition to that already issued sufficient to make the total issue of paid-up stock aggregate one hundred thousand dollars.

On motion of Director Thos. H. Simms, the meeting adjourned, subject to the call of the president.

W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

"H."

WASHINGTON, ARKANSAS, *May 22nd*, 1883.

On this day the board of directors of the Arkansas and Louisiana Railway Company *held* at the office of said company, in the town of Washington, in the county of Hempstead, in the State of Arkansas.

Present: W. H. Carruth, president; A. B. Williams, J. K. Jones, Thos. H. Simms, J. D. Conway, H. B. Holman, P. F. Beardsley, W. P. Hart, and R. B. Williams, directors.

On motion of Director James K. Jones, the following resolution was adopted:

Resolved, That the company enter into a contract with J. D. Beardsley for the construction of the line of railroad proposed to be constructed; and the following contract was submitted for the action of the board, to wit:

Memorandum of a contract made at Washington, Ark., on the 22nd day of May, in the year 1883, between J. D. Beardsley, of Washington, Ark., of the first part, and the Arkansas and Louisiana Railway Company, a corporation created and existing under the laws of the State of Arkansas, of the second part, witnesseth:

96 Whereas the said J. D. Beardsley, under an agreement with the Arkansas and Indian Territory Railway Company, has changed the gauge of ten miles of road between Hope, on

the St. Louis and Iron Mountain railway, and the town of Washington to a standard gauge, and relayed the same with 56-lb. and 60-lb. iron rail, and has replaced most of the narrow-gauge ties with good standard gauge ties, which ties, with all the iron rails, fastenings, spikes, &c., he has furnished, and he has also constructed for the said Arkansas and Indian Territory railway about three and a half miles of new road-bed between Hope and Washington and some seven or eight miles of new road-bed northwest of Washington, and has laid, surfaced, and finished about three miles of new road northwest of Washington, using thereon good and sufficient standard-gauge ties and an iron rail of 56 lbs. or 60 lbs. to the yard, which ties, rails, with the spikes and fastenings, &c., the said J. D. Beardsley has furnished; on account of this and other work done and this and other material furnished the said Arkansas and Indian Territory Railway Company has delivered to said J. D. Beardsley fifty of its first-mortgage bonds for the sum of one thousand dollars each, and all the balance for all work done and for all material furnished by the said J. D. Beardsley for the said Arkansas and Indian Territory Railway Company is yet due and unpaid;

And whereas, by deed dated May 17th, 1883, the Arkansas and Louisiana Railway Company purchased and acquired the said Arkansas and Indian Territory railway, together with its franchises, rights, privileges, and all its property, real and personal, and it was a condition of the said purchase that the said Arkansas and Louisiana Railway Company should assume and pay all legal debts and liabilities, to discharge all obligations of the Arkansas and Indian Territory railway;

And whereas the said Arkansas and Louisiana Railway Company has authorized an issue — its stock to an amount equal to twenty thousand dollars per mile for the entire length of its projected road, from the line of the State of Louisiana to the line of the In-
97 dian Territory, and has authorized an issue of bonds to an extent of fifteen thousand dollars per mile for the entire length of its road as aforesaid, which bonds are to bear interest at the rate of 5 p. c. and are to be secured by first mortgage on the road, road-bed, and all the property and franchises of the company; and the Arkansas and Louisiana Railway Company has authorized and directed its president and secretary to contract for the construction of its said road, paying therefor, if possible, in the stock and bonds aforesaid, all of which will appear by reference to records of the company: Now, therefore, this contract is made: The said J. D. Beardsley, for the payments and considerations hereinafter set forth and expressly, covenants, undertakes, and agrees as follows: He is to replace all the narrow-gauge ties remaining in the road between Hope and Washington with good standard-gauge ties and put the road in good order for business. He also undertakes to proceed at once to grade, build, and complete a section of the road from Washington northwest, a distance of from fifteen to twenty-five miles, to such point as may be designated on the present location or an extension of it. He is to procure at his own cost good ties of white or post oak, to be eight feet long and not less than six inches thick, and

to put on the same iron rails not less than 56 lbs. to the yard, and equal in quality to the rails now laid upon that portion of the road now under iron.

He is to furnish spikes, fastenings, and all necessary materials, and lay the road, align and ballast it, and finish it in good condition for traffic. He is also to grade and construct all necessary sidings, using upon them the same kind of iron and ties and putting them in as good condition as the main track, and he is to build and finish at each station a good and acceptable depot building, which is to become the property of the company; and, in addition to the before-mentioned undertakings, he agrees to return to the Arkansas and Louisiana Railway Company for cancellation the fifty bonds of the denomination of one thousand dollars each heretofore paid him by the Arkansas and Indian Territory Railway Company on account, and cause to be cancelled the mortgage heretofore
98 made by the Arkansas and Indian Territory Railway Company on its road-bed, road, franchises, &c., to the end that the mortgage to be made by the Arkansas and Louisiana Railway Company may be a first lien upon the entire road and road-bed from the line of the Indian Territory to the line of the State of Louisiana.

The said J. D. Beardsley further covenants and agrees that he will continue to construct and finish the road which it is proposed to build in the State of Arkansas under the charter of the Arkansas and Louisiana Railway Company, or under the charter acquired by the purchase of the Arkansas and Indian Territory Railway Company, as fast as the company may desire him to do so, furnishing the road in good condition for traffic and putting up at each station good and sufficient depot buildings and building all necessary buildings, bridges, culverts, and cattle gaps, but it is not intended to include round-houses or machine shops as necessary buildings.

For the performance of this contract by the said J. D. Beardsley the Arkansas and Louisiana Railway Company agree to pay him as follows: For the work done in changing the gauge of the road from Hope to Washington and changing the road-bed and constructing three and one-half miles of new road-bed southeast of Washington and in full for all material furnished and for all work done for the Arkansas and Indian Territory Railway Company southeast of Washington, including the new depot at Washington and the siding at Washington, and also for the surrender of the fifty bonds of the denomination of one thousand dollars each for cancellation heretofore paid to him by the Arkansas and Indian Territory Railway Company, he is to have—

First. All the lands granted by the State of Arkansas to the Washington and Hope Railway Company or that may hereafter be conveyed *with* the law for that purpose approved March 5th, 1879, entitled "An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company."

Second. He is to have all the light rails, spikes, bolts, and
99 fastenings that were used upon the narrow-gauge road-bed of the Washington and Hope railway, and also all the rolling-

stock and personal property of all kinds acquired by the Arkansas and Indian Territory Railway Company by purchase of the Washington and Hope railway and by that company sold to the Arkansas and Louisiana Railway Company, subject, however, to the payment of whatsoever balance may be due the St. Louis Iron and Bolt Company of St. Louis on account of the purchase of material by the Washington and Hope Railway Company.

Third. The Arkansas and Louisiana Railway Company shall deliver to the said J. D. Beardsley the sum of one hundred thousand dollars par value — the paid-up capital stock of this company and the further sum of one hundred and fifty thousand dollars of the first-mortgage bonds of this company. All these payments are declared to be now due, and when paid will be in full for the work done between Washington and Hope, including depot, sidings, and the surrender for cancellation of the fifty bonds of one thousand dollars each of the Arkansas and Indian Territory Railway Company, as hereinbefore provided.

For the construction of the road in the State of Arkansas *of* which it is agreed he shall construct he is to receive for every mile of road constructed and finished, including bridges, culverts, cattle gaps, and the necessary sidings, twenty thousand dollars of the paid-up capital stock of the Arkansas and Louisiana Railway Company and fifteen thousand dollars of the first-mortgage bonds of the Arkansas and Louisiana Railway Company, being an aggregate in stock and bonds of thirty-five thousand dollars ($35,000) per mile. It is also declared that upon the completion and acceptance of each mile of road in good condition for traffic, as hereinafter provided, the said J. D. Beardsley shall be entitled to demand and the president and secretary shall issue him paid-up certificates for twenty thousand dollars of the stock of the Arkansas and Louisiana Railway Company, and upon the completion of each section of five or more miles and its acceptance, as hereinafter provided, the president and secretary shall issue to him upon his request the
100 sum of seventy-five thousand dollars in the first-mortgage bonds of this company, which will be, as above provided, a sum in stock and bonds equal to thirty-five thousand dollars per mile.

As a further consideration for the performance of his undertaking hereinbefore set forth the Arkansas and Louisiana Railway Company covenant and agree that — the term occupied in the construction of this road in the State of Arkansas, not to exceed five years from the signing of this contract, the said J. D. Beardsley shall have the entire, complete, and exclusive right and use and control of the road, road-bed, switches, depots, and all the property of this company, both for the purpose of constructing and traffic, and shall be entitled to collect and receive for his own use and benefit all earnings, revenues, and profits arising out of its use and from any and all sources connected with it, and this use is to be free of all rent and charges.

For the purpose of settling any question or dispute which may arise under this contract between the parties hereto, and to provide

for the examination and acceptance of the road as constructed under the contract, it is agreed by both parties hereto that a committee of three persons shall be formed as follows: The president of the Arkansas and Louisiana Railway Company shall appoint two persons and J. D. Beardsley shall name one person. If these persons shall accept the appointment the secretary shall make it of record upon the books of the company, and shall furnish a certified copy of such record to J. D. Beardsley. The decision of this committee or of any two of them upon any question which may arise under this contract shall be final and beyond appeal as to the parties hereto. It shall be the duty of this committee or any two of them, upon request of either of the parties hereto, to examine the road as constructed in sections of not less than one mile, and, if they find the same in good condition for traffic, they are to accept it, making the acceptance in writing, in duplicate, and signed by at least two of the committee. Each of the parties hereto shall be entitled to a copy
101 of this acceptance, and upon receipt of such acceptance, signed as above, and upon request of J. D. Beardsley, it is made the duty of the president and secretary of the company to issue at once without any delay the paid-up certificates of stock for sections of one mile or more and the first-mortgage bonds, as heretofore provided, for sections of five miles or more.

In case of the death, removal, or resignation of a member of the committee, his place may be supplied by the party who appointed him, and the secretary shall make record of the change, as provided for—the original appointment, and all the duties and powers of the original members shall devolve upon their successors.

It is agreed that this contract may be modified, changed, or amended only by the agreement of both parties hereto in writing, under seal, either indorsed hereon or made a supplementary contract.

It is also understood that this contract is made subject to the approval and ratification of the directory of the Arkansas and Louisiana Railway Company, which approval, if made, is to be of record and a certified copy of such record hereon endorsed by the secretary of the company, properly attested.

It is also agreed that said J. D. Beardsley may associate with himself other parties under this contract, and may assign to them such interest as he may think proper, and the Arkansas and Louisiana Railway Company, upon proper notice of such assignment and proper evidence that it is made in good faith, will recognize it and consider the party to whom such assignment is made as a principal under it.

In witness whereof the said J. D. Beardsley has hereunto set his hand and seal on the day and year above written,
[SEAL.] and the Arkansas and Louisiana Railway Company has

caused these presents to be signed by its president and its secretary and its corporate seal to be hereto affixed.

J. D. BEARDSLEY. [SEAL.]
ARKANSAS AND LOUISIANA RAILWAY COMPANY,
By W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS,
Secretary Ark. & La. R'y Co.

102 Which said contract, having been read and carefully considered, was by the board unanimously adopted and the president and secretary of this company directed to execute the same and to issue to J. D. Beardsley the stock and bonds at the times and in the manner provided in said contract. Thereupon W. H. Carruth, president, appointed on behalf of the Arkansas and Louisiana Railway Company Messrs. Henry B. Holman and A. B. Williams as members of the committee to inspect and receive the road as constructed and to adjust and decide any questions that may be in dispute between the parties to the contract this day entered into with J. D. Beardsley for the construction of the road, and J. D. Beardsley on his part appointed W. H. Carruth as a member of said committee, as provided in said contract.

These gentlemen having accepted the appointment as members of such committee, on motion of J. D. Conway the appointment of H. B. Holman, A. B. Williams, and W. H. Carruth was unanimously approved.

And, on motion of H. B. Holman, the meeting adjourned.

W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

Endorsed as follows: For and in consideration of the sum of five dollars to me in hand paid by Geo. C. Smith, the receipt of which is hereby acknowledged, I, John D. Beardsley, have this day in good faith sold, assigned, and transferred to the said Geo. C. Smith an equal, undivided one-half interest in and to the foregoing contract, and for the consideration aforesaid I do hereby agree to share with the said Geo. C. Smith all and every the benefits and compensation named in said contract, hereby associating the said Geo. C. Smith with me as a principal party in and to said contract. In witness whereof I have hereunto set my hand this the 4th day of August, 1883. Signed, J. D. Beardsley.

103 STATE OF ARKANSAS, }
Hempstead County. }

I, Robert S. Williams, do solemnly swear that I am the secretary of the Arkansas and Louisiana Railway Company, and as such secretary have possession of the records of the Washington and Hope Railway Company, the Arkansas and Indian Territory Railway Company, and the Arkansas and Louisiana railway, and that the

exhibits attached to the answer of J. D. Beardsley, marked, respectively, A, B, C, D, E, F, G, and H, are truly and correctly copies from the records of said several companies.

R. B. WILLIAMS.

Sworn to and subscribed before me this first day of April, A. D. 1886.

RALPH L. GOODRICH, *Clerk*,
By W. P. FIELD, *D. C.*

Endorsed: Filed April 1st, 1886. Ralph L. Goodrich, clerk.

And on April 3rd, 1886, the following proceedings were had, to wit:

PAUL F. BEARDSLEY,
v.
JOHN D. BEARDSLEY and ARKANSAS AND LOUISIANA RAILWAY COMPANY. } 811.

On this day came the complainant, by Jones & Martin, his solicitors; also came the defendants, by A. B. Williams, J. D. Conway, and J. M. Moore, their solicitors; and thereupon, on the motion of the defendants, it is by the court ordered that the defendant, John D. Beardsley, be, and he is hereby, authorized to enter into negotiations for money to complete or extend the Arkansas and Louisiana railway, and, if the same can be obtained upon fair and reasonable terms, to enter into contract therefor, and to that end he is authorized to provide for the securing of the same by the execution of a mortgage on the railroad, the property, and the franchises of the said company or the pledge of the stock and bonds thereof, or both, as may be necessary and as is usual in such contracts; and upon the execution of such contract the same shall be submitted to the court for approval, and, if it is by the court approved, it shall be binding on all the parties to this cause and not otherwise, and all additional orders that may be necessary in executing and carrying said contract into effect will thereupon be entered.

104

And on April 7th, 1886, the following replications were filed:

In the United States Circuit Court for the Eastern District of Arkansas.

PAUL F. BEARDSLEY, Complainant,
—
JOHN D. BEARDSLEY and ARKANSAS & LOUISIANA R'Y CO., Defendants. } Replication.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefits and advantages of exception which may be had to the manifold insufficiencies of the answer of the defendant, John D. Beardsley, for replication thereto says that he will aver, maintain, and prove his bill of complaint to be true,

certain, and sufficient in the law to be answered unto, and that said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain, and prove as honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

JONES & MARTIN,
Sol's for Complainants.

(Endorsed:) Filed April –th, 1886. Ralph L. Goodrich, clerk.

In the United States Circuit Court for the Eastern District of Arkansas.

PAUL F. BEARDSLEY, Complainant,
v.
JOHN D. BEARDSLEY and ARKANSAS & LOUISIANA R'Y CO., Defendants. } Replication.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefits and advantages of exception which may be had to the manifold insufficiences of the answer of the defendant, The Arkansas and Louisiana Railway Company, for replication thereto, says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that said answer of the said defendant is uncertain and insufficient to be replied unto by repliant without this; that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain, and prove as this hon. court shall direct, and humbly prays as in and by his said bill he hath already prayed.

JONES & MARTIN,
Sol's for Complainant.

(Endorsed:) Filed April 7th, 1886. Ralph L. Goodrich, clerk.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

JUNE 12TH, 1886.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY and ARKANSAS & LOUISIANA RAILWAY Co. } 811.

Come the parties to this cause, the complainant, by Jones & Martin, his solicitors, and the defendants, by A. B. Williams and J. M. Moore, their solicitors, and it appearing that the Arkansas and Louisiana Railway Company is indebted to the St. Louis, Iron Mountain and Southern Railway Company in the sum of six thousand dollars or thereabouts for balances on freight and traffic, and there being no money on hand with which to meet the same it is ordered that W. H. Carruth be authorized to make such arrangements for the extension of the time of payment of said balances until next October as he may be able by giving the note or acceptance of the Arkansas and Louisiana Railway Company, with such indorsement thereon as he may be able to procure.

107 And on July 14th, 1868, the following agreement was filed:

In United States Circuit Court.

PAUL F. BEARDSLEY, Plaintiff,
v.
JOHN D. BEARDSLEY *et al.*, Defendants. } Agreement to Read Depositions.

We hereby agree that the deposition of J. G. Yowell, Geo. L. Rector, J. H. Bell, W. P. Hart, H. H. Wheeles, R. B. Williams, P. F. Beardsley, J. W. Teeters, Ed. Alexander, Vinton Alderman, W. H. Carruth, and John D. Beardsley, filed in this cause and taken by consent of parties, may be read as evidence upon the hearing thereof, subject to objection for incompetency or irrelevancy only.

Done at the city of Little Rock, Ark., this the 3rd day of July, A. D. 1886.

JONES & MARTIN,
Sol's for Plaintiff.
J. M. MOORE,
Sol. for Defendant.

(Endorsed:) Filed July 14, 1886. Ralph L. Goodrich, clerk.

And on July 17th, 1886, the following proceedings were had, to wit:

P. F. BEARDSLEY
v.
J. D. BEARDSLEY *et al.* } 811.

Comes the complainant, by Jones & Martin, Esqs., his solicitors, and come the defendants, by A. B. Williams and J. M. Moore, Esqrs., their solicitors, and thereupon it is by the court ordered that the

defendant, The Arkansas and Louisiana Railway Company, be authorized to purchase two locomotive engines for use on said road on a credit.

108 And on August 20th, 1886, the following proceedings were had, to wit:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY and THE ARKANSAS AND LOUISIANA RAILWAY COMPANY. } 811. Decree.

This cause being brought on to be heard upon pleadings and proofs and Jones & Martin having been heard on the part of the complainant, and John M. Moore, A. B. & R. B. Williams, and J. D. Conway on the part of the defendants, and due deliberation having been had, it is ordered, addjuged, and decreed that the complainant, Paul F. Beardsley, is the equitable owner of one-third of the fully paid and the non-assessable stock of the defendant, Arkansas and Louisiana Railway Company, which has been issued in lieu of the stock of the Washington and Hope and the Arkansas and Indian Territory Railway Companies, amounting to one thousand shares of the face value of one hundred dollars per share, and one-third of the like kind of stock which has been issued under the terms of the construction contract of May 22nd, 1883, between said Arkansas and Louisiana Railway Company and the defendant, John D. Beardsley, amounting to one thousand shares of the like face value, and also a like proportion of such stock as should be issued under said construction contract for that part of said railway which has been constructed and is in operation between the towns of Washington and Nashville, and amounting to three thousand three hundred and thirty shares of the like face value, less one-third of eight shares of such stock which have been issued to qualify the directors of said company; and it is further ordered, adjudged, and decreed that the complainant is the equitable owner subject to the lien thereon of the St. Louis, Iron Mountain and Southern Railway Company, of one-third of the first-mortgage bonds of the said railway company, amounting to two hundred and forty in number which have been issued
109 and certified and which are now held by the St. Louis, Iron Mountain and Southern Railway Company as collateral security and which are numbered from one to two hundred and forty, inclusive, and are of the face value of one thousand dollars each, and also a like proportion of such bonds as have been or should be issued under said construction contract of May 22nd, 1883, for that part of said railway which has been constructed and is in operation between said towns of Washington and Nashville and amounting to one hundred and sixty in number and of like face value. It is further ordered, adjudged, and decreed that the complainant is indebted to the defendant, John D. Beardsley, for balance due upon his purchase of one-third of the stock of the Washington and Hope Railway Com-

pany in the sum of three thousand seven hundred and ninety dollars and forty-four cents, with six per cent. interest from this date, which he shall pay to said defendant or his solicitor of record or into the registry of the court within ninety days from this date, and that upon such payment being made the said defendant shall deliver and convey to the complainant or his solicitors of record or into the registry of the court one-third of all the full-paid stock of said railway company, less one-third of eight shares issued to the directors, which has been issued or ought to have been issued to the said defendant upon any account whatever, and which one-third to be so delivered and conveyed amounts to seventeen hundred and seventy-five shares, of the face value of seventy-five dollars each, and that at the same time the said defendant will deliver to the complainant or his solicitors of record or into the registry of the court one-third of the one hundred and sixty first-mortgage bonds which have been earned under the construction contract aforesaid, but not certified or held as collateral security.

It is further ordered, adjudged, and decreed that the defendant railway company proceed without delay to do on its part whatever may be necessary to enable the defendant, John D. Beardsley, to comply with this decree; and for that purpose said Arkansas and
110 Louisiana Railway Company, through its president and secretary and under its corporate seal, will issue and deliver to the said John D. Beardsley certificates of fully paid and non-assessable stock of said company for three thousand three hundred and thirty shares, of the face value of one hundred dollars per share. It is further ordered, adjudged, and decreed that the defendant, John D. Beardsley, as soon as he shall have received from the St. Louis, Iron Mountain and Southern Railway Company the two hundred and forty first-mortgage bonds of the defendant railway company, now held as collateral security, or as soon as the debt due the said St. Louis, Iron Mountain and Southern Railway Company shall have been paid, shall deliver to the complainant one-third of all said bonds. It is further ordered, adjudged, and decreed that the said John D. Beardsley hold the legal title in trust for the use and benefit of the said Arkansas and Louisiana Railway Company, to the following-described lands, to wit: Lot eight, in block thirteen, and lots five, six, eight, nine, and ten, in block twenty, all in the town of Hope, in Hempstead county, and all of blocks eighty-three, one hundred and four, one hundred and thirty-one, one hundred and thirty-eight, and one hundred and forty-six, in the town of Washington, in Hempstead county; also the west quarter of southeast quarter of southwest quarter and east half of southwest quarter of southwest quarter of section thirty, township sixteen south, range twenty-five west; also the southwest quarter of northwest quarter, the northeast quarter of southwest quarter, and the southeast quarter of the southeast quarter of section thirty-one, in township ten south, of range twenty-five west; also the southwest quarter of the northeast quarter and the northwest quarter of the northeast quarter, and the north half of the southwest quarter of section two, in township twelve south, of range twenty-five west; also the

southeast quarter of the southwest quarter in section thirty, in township nine south, range twenty-six west; also the northeast quarter of the southwest quarter and the southwest quarter of the southwest quarter, and the east half of the northwest
111 quarter of the southwest quarter of section thirty, in township nine south, range twenty-six west; also the southwest quarter of the northwest quarter of section four, in township ten south, range twenty-six west; and part of the southwest quarter of the southeast quarter of section thirty-two, in township nine south, range twenty-six west, all in Hempstead county, Arkansas; also the following lands lying in the county of Howard, State of Arkansas, to wit, the north half of the southeast quarter of section twenty-six, township nine south, range twenty-seven west, containing eighty acres excepting two adjoining blocks of two acres each heretofore sold to F. W. Lee and D. B. Lane, described and bounded as shown in their deeds, and also excepting the lot now occupied by W. C. Sypert's store and the printing office, twenty-five by one hundred and forty-two feet, and a piece of land in the southeast corner of land heretofore conveyed and running north along the line between section twenty-five and twenty-six, two hundred and fifteen feet, thence in a line due west at right angles four hundred and thirty feet; thence due south at right angles two hundred and fifteen feet to south line of land hereby conveyed; thence at right angles along said line to point of commencement, all containing about two acres, being the same land conveyed by W. C. Cypert and K. K. Sypert to J. D. Beardsley, by deed bearing date January 11th, 1884.

Also the following-described lands lying and being situate near Nashville, in Howard county, in the State of Arkansas, to wit: The northwest quarter of the northwest quarter, the northeast quarter of the northwest quarter, the southeast quarter of the northwest quarter, the northwest quarter of the northeast quarter, the northeast quarter of the northeast quarter, the southwest quarter of the northeast quarter, and the southeast quarter of the northeast quarter, all known as the Rector place, and exclusive of lots sold previous to the 30th day of August, 1883, out of the northeast quarter of the northwest quarter and the north half of the northeast quarter (and not intended to include any land not owned by me on that
112 day), all in section twenty-six, in township nine south, range twenty-seven west, and containing in all two hundered and thirty-seven acres more or less, conveyed by deed from A. M. Rector to J. D. Beardsley, of date January 1st, 1885.

And also holds the legal title in trust for the use and benefit of said railway company of a contract with the Pan Electric Telephone Company for the purchase and use of telephone instruments along the line of the said Arkansas and Louisiana Railway Company and in the territory contribu'ory thereto, in the States of Arkansas and Louisiana, and also of the lines of telephones erected under said contract, and that he, within ninety days from this date, execute and deliver to the said Arkansas and Louisiana Railway Company proper deeds and instruments of conveyance, conveying to said railway company the legal title to all of said lands and improvements

thereon, and all rights, benefits, and advantages accruing under the contract now held by him with said Pan Electric Telephone Company and any line or lines of telephone that have been built.

It is further ordered, adjudged, and decreed that the said John D. Beardsley, his agents and attorneys, be perpetually enjoined and restrained from in any manner controlling, conveying, disposing of, or incumbering any part of the property, real or personal, including the bonds and stock, herein decreed to belong to and by him conveyed to the complainant or to the Arkansas and Louisiana Railway Company except in the manner ordered in this decree.

It is further ordered, adjudged, and decreed that all interest of the plaintiff in the contract of May 22nd, 1883, from this date is extinguished and annulled, and said plaintiff shall not be entitled to claim, have, or receive any benefits under or by virtue of said contract for any work hereafter performed thereunder, provided that so much of said construction contract as gives to said defendant, John D., all the earnings of the defendant company for the term of five years shall have no application as between the plaintiff and any other present or future stockholder and the defendant, John D., as to the present constructed line of road, but the plaintiff and all other stockholders shall share in the net earnings of the present line of said road according to the stock held by them
113 respectively in the same manner as if said contract had never contained said clause; and it is provided that said contract and the rights, duties, and liabilities arising thereunder shall not be in anywise impaired or affected as between the said John D. Beardsley and the said railway company by this decree except as hereinbefore specifically set forth and provided.

It is further decreed that the said John D. Beardsley pay all the costs accrued in this cause, and that this cause be retained for any further orders that may become necessary in the enforcement and execution of this decree.

(Endorsed:) The words "real or personal, including the bonds and stock," interlined in this decree were inserted by consent of parties, with the approval of the court, April 9th, 188*a*. Jones & Martin, sol's for pl'ff. J. M. Moore, for defendants.

At the hearing the following depositions were read:

In the Circuit Court of the United States for the Eastern District of Arkansas.

PAUL F. BEARDSLEY, Complainant,
v.
JOHN D. BEARDSLEY and THE ARKANSAS & LOUISIANA R'Y Defendants.

Deposition of Paul F. Beardsley.

My name is Paul F. Beardsley. I am forty-three years of age. I am the complainant in this suit. I first came to this State in Sep-

tember, 1881. I came at the request of John D. Beardsley, the defendant herein. He met me at the city of St. Louis, Mo., by appointment about the middle of that month. He had written me
114 to telegraph him what day I would arrive there, and that he would meet me there. I did telegraph him from the town of Evanston, in the Territory of Wyoming. He procured passes for me from the city of St. Louis to the town of Hope, Ark., and return to St. Louis. He paid all my expenses from St. Louis to Washington, Ark., and back to St. Louis. I demurred to his paying my expenses, but he insisted, saying that he had brought me down there to look over the property with the hope that I could make arrangements to buy his partner's half interest in it and become interested in it with him.

He expressed himself as having great faith in its success if we could work it out of debt and extend it. He said he felt quite sure his partner would sell his interest for $10,000 in ready money, and that he had repeatedly offered it to him on a credit for $12,000. I had suffered very severe losses in California from fires, depreciation of real estate, failures, and unfortunate mining speculations, amounting to more than $100,000, and I felt that his desire to have me associated with him in this railway enterprise was sincere, and that he was actuated by his brotherly affection for me—he being my elder brother and seven years my senior—and that it was his intention to assist me in some measure to retrieve some of my losses.

Acting on this belief, I went to the city of New York with the view of selling some mining properties which had been placed in my hands for sale upon a commission, the consummation of which sales would have enabled me to buy the interest of his partner in the railway. After spending about a month in the city of New York, during which time I was in constant correspondence with my brother about railway negotiations, &c., &c., and failing to accomplish the sales of the mining properties before spoken of, I returned to Washington under an understanding that I would work for the company for the sum of $75 per month until such time as we could make some satisfactory agreement about an interest in the railway, or, failing in that, until I could do better in some other business.

Immediately after my arrival in Washington, Ark., we discussed the purchase of the Alderman interest. He stated that Mr. Alder-
115 man was very anxious to dispose of his interest to him for the sum of $12,000 upon a very liberal credit, for the reason that his wife was not willing to come to Arkansas to live, nor was she willing to have him to come here to attend to the business without her; so, not being able to give it his personal attention, he was determined to dispose of it upon the best terms he could. Having no acquaintance with Alderman myself, I then urged my brother to write to him and purchase his one-half interest for the sum of $12,000 upon a credit for my account, with the understanding that he should apply all the profits of said interest to the payment of the 12,000 except what might be necessary for the actual living expenses of myself and family. To this he would not fully agree, but said that he was going home to spend Christmas with his family in West Va., and

that he would then purchase from Alderman his one-half interest upon the best terms he could make with him as to price and time, and that he would let me have two-thirds (⅔) of said interest upon the same terms and conditions which he should make with Alderman. This arrangement I agreed to, and it was understood that it would be completed and go into effect on January 1st, 1882.

This agreement was made about Nov. 10th, 1881. Considering this to be a permanent arrangement, I wrote my wife, who with my three children was then residing in the city of Washington, D. C., to make her arrangements to come on to Washington, Ark., about Dec. 1st, and in response to my letter she and my children did come, arriving in Washington about Nov. 30th, 1881. A short time after my agreement with my brother about the purchase of Alderman's interest he received a letter from one J. W. Paramore, of St. Louis, Mo., saying that Mr. Alderman had written to him offering to sell him his one-half (½) interest in the Washington and Hope railway for the sum of $12,000, and asking him (J. D. Beardsley) of what said interest consisted and in what condition it then stood.

He consulted with me immediately upon the receipt of this letter, and we agreed that he should at once write to Alderman and
116 accept his proposition to sell him (J. D. Beardsley) his one-half (½) interest in said railway for the sum of $12,000 upon a credit, and that I should have two-thirds (⅔) of said Alderman's interest, equal to one-third of the whole, for the sum of $8,000 upon the same terms as he should agree upon with Alderman. He immediately wrote to Alderman that he would accept his proposition to sell his interest for $12,000, and that he would go home about Christmas and agree with him about terms of payment, &c. By return of mail he received a reply from Alderman, saying that his letter had been received, and that he considered his interest in said railway sold to him for the sum of $12,000. This, as near as I can state, was about November 15th, 1881. We had talked this purchase over between ourselves previous to the receipt of Mr. Paramore's letter, and it was agreed that all the net profits of my one-third interest should be applied towards the payment of the $8,000, saving only what might be required for my necessary living expenses. I stated to him that I held a note against a party in California, which, with interest, amounted to over $1,200, and that this party owned property in Europe which was very valuable, and that he was then in Europe negotiating a sale of his property, and that I hoped upon his return to be able to collect the amount of said note, and if I did collect it I would pay it on account of said $8,000. I never stated to him at any time after coming to Arkansas that I owned a valuable gold mine, or that I had any other assets whatever that could be made available in paying any portion of the $8,000 other than the note above referred to. I believe that my brother at the time the Alderman purchase was made understood my financial condition as fully and as well as I did myself. I kept nothing secret from him, but, on the contray, my large losses in California were the subject of frequent conversations between us.

After our agreement regarding the purchase was made, in Nov.,

1881, I went regularly upon the trains as conductor; also taking entire charge of the operating department of the road. Everything went on quietly and satisfactorily, and in my brother's ab-
117 sence, which was quite frequent, the entire business of the road was under my control, and all the employees took their orders from me. About the 2nd or 3rd of January, 1882, my brother, without solicitation or request, handed me an envelope marked "Stock memorandum," and which contained the original stock memorandum, a true copy of which is set forth in the complaint in this cause, saying, "Here is a memorandum of our agreement, which you had better take and put away, for if anything should happen to me you would have nothing to show your interest in the road." Being quite busy at the time, I put the envelope in my pocket, and after going home that night examined it, finding that it corresponded with our agreement previously made, with the exception of a slight deficiency in the par value of the shares and an excess in the number of shares as expressed therein, but, believing this to be a clerical error and knowing we both understood the interest referred to as a full one-third ($\frac{1}{3}$), neither more nor less, I did not consider it necessary to call his attention to the error, but gave the memorandum to my wife for safe keeping, and it has ever since been in my possession.

Previous to January of the present year this memorandum has never since been talked of or referred to between us, nor have I had any reason to feel or consider that he did not regard it as being in full force and effect, nor has he at any time since the delivery to me of the said memorandum, in January of 1882, and prior to the month of January, 1886, ever asked or demanded from me the payment of any money whatever on account of the payment of the $8,000 which he now claims to be due and wholly unpaid. Some time during the summer of 1882 or later my brother informed me that he had put me in the directory of the company. I did not request him to do so and was not present at the meeting of stockholders or directors when this was done and knew nothing about it until he told me. I was in day-time always engaged upon the road, and except in his absence took no part in the financial management of the company. When a directors' meeting was held he generally detailed to me what had been done, and in the same way when he returned
118 from a trip to St. Louis or some other place where he had been on business for the company. He always talked over with me whatever he had accomplished by said trips. He told me he had withdrawn his name from the directory for the purpose of making a construction contract. He said he had made the contract in his own name for the reason that he could deal with outside parties more readily, and that he, being an alien, would have the right to carry any litigation that might arise into the Federal courts, which he considered a great advantage.

He never intimated to me nor did he consider that the construction contract would interfere with my rights or ownership in the road in any manner whatever. I was not present at the meeting of directors when the construction contract was entered into, to the

best of my knowledge and belief. So far as I can now remember I never attended but one meeting of directors, and my recollection of what occurred at that meeting is that it was held to authorize an issue of some bonds to the Iron Mountain Railway Company as security or in payment of our indebtedness to them. I went with my brother to the secretary's office on one or two occasions after night to sign up some records or resolutions on the company's records, which he advised me was necessary to perfect the issue of these bonds to the Iron Mountain Company. Relying implicitly upon his judgment, good faith, and integrity, I acted under his instructions and complied with his requests in all these matters, never for a moment fearing that he would or could take advantage of any of my said acts. At the time of the organization of the Arkansas and Indian Territory railway and the Arkansas and Louisiana railway he told me that he had put me down as owning 200 shares of the capital stock of each of the said companies and himself as owning 400 shares in each of said companies. These and other circumstances of like nature served to lead me to believe that he was acting in good faith toward me at all times prior to January, 1886. The contract for the furnishing of rails, fastenings, rolling stock, and money made with the St. Louis, Iron Mountain and Southern Railway Company was made about the month of June, 1882, nearly one year
119 before the construction contract marked Exhibit "H" to defendants' answer in this cause was made or thought about. On his return from St. Louis, after making said contract, J. D. Beardsley stated to me that he had told Captain Hayes that he had let me have an interest in the road. Some time in the summer of 1883 Captain Hayes telegraphed to J. D. Beardsley to meet him at Hope on a certain day. I went with J. D. Beardsley to Hope on the day named and we met Captain Hayes and party there. We had asked them to furnish us with another locomotive. Hayes took J. D. Beardsley to one side and said to him—so J. D. Beardsley afterwards told me—that they had helped us a good deal and wanted to help us all they could, but would like to feel that in helping us they would be helping themselves, and that they would like to have some of the stock of our company, and asked him, J. D. Beardsley, to come to St. Louis the next week and see him about it. I asked my brother how much stock they wanted, and he said one-half of all the stock. He also told me that Hayes had said to him that they could probably make one-half of the stock worth more to us than the whole would be if we kept it all ourselves. I said to him, J. D. Beardsley, that I thought that if we gave them half of the stock that they ought to assume or pay the $12,000 which was owing to Alderman, and he said he would talk to Hayes about it when he went to St. Louis. He went to St. Louis at the time agreed upon, and when he returned he told me that he had given Hayes one-half of the stock and assigned him also a one-half interest in the construction contract. I asked him what provision he had made for the $12,000 to be paid to Alderman, and he said that Hayes had questioned him as to what the $12,000 was for, and that on being told that it was for money put into the road by his former partner he, Hayes, said, That is all

right; let the company assume and pay that $12,000 just the same as any other debt.

At the time of my agreement with my brother, in November of 1881, the whole capital stock of the Washington and Hope Railway Company consisted of one hundred thousand dollars, divided into four thousand shares of twenty-five dollars each. It was my
120 understanding at that time that all of said stock was issued in the name of J. D. Beardsley, and that he held one-half of it in trust for his partner, Vinton Alderman, so that when the purchase of Alderman's interest was made no transfer of stock was made or necessary. At the time of my purchase of two-thirds of the Alderman interest, dating from January 1st, 1882, the road was completed the whole distance from Washington to Hope, with iron rails, and had one locomotive, one passenger car, and four freight cars running upon it. The road was what is known as a narrow-gauge road, and the rails were light rails, weighing from 22 lbs. to 25 lbs. per yard. No part of this iron or rolling stock or any other property of the said Washington and Hope Railway Company was claimed or spoken of as the private or individual property of J. D. Beardsley at the time of said sale to me, nor was any part of any of the said property reserved or exempted from the said sale, either verbally or in writing, nor did he claim that anything was due him from the road on account of same. These rails, rolling-stock, land grants, and other personal property of the Washington and Hope railway are the same sold to the Arkansas and Indian Territory Railway Company and to the Arkansas and Louisiana Railway Company and referred to and forming a part of the consideration mentioned in the construction contract, dated May 22nd, 1883, marked Exhibit "H," to defendant's answer in this cause. I have read the deposition of one Edward Alexander, taken at Washington, Ark., June 22nd, 1886, and will say that I have no recollection of any such conversation as stated by him.

Whatever conversation was had, if any, referred only to the tie business then in settlement between us, and the subject of any interest in the road and its property was never at any time referred to between us nor discussed with him in any manner whatever.

I have also read the affidavit of one J. M. Simms, which is used by consent as his deposition, and will say that I have no recollection of any such conversation as stated by him. I never conversed with him in regard to my interest in the road nor stated to him that I
121 had no interest in the road, or words to that effect, nor did I at that time or at any other time use or utter any words that could be construed in that way. After January 1st, 1882, I never considered that I was working for a salary. I drew from the agent or from Mr. Carruth from time to time such sums of money as were necessary to cover my living expenses and no more. I lived very economically, and my total expenses did not exceed an average of more than $100 per month, and some months of which I kept memoranda they did not exceed $75. No regular account was kept against myself or J. D. Beardsley from Jan. 1st, 1882, until Dec., 1883, a period of nearly two years, but we each drew just what was necessary and

no more. J. D. Beardsley never at any time during this period of two years in any manner referred to the question of salary, nor did he at any time by word or act intimate that he thought I was using more money than I ought or had a right to use. During this period there were no other parties in interest in the road, but during the latter part of 1883 the stock interest was given to Captain Hayes, and it was then agreed that we must employ a book-keeper and keep a regular system of accounts. This we did about January or February of 1884 and the present set of books now kept by Mr. H. H. Wheeles were opened. All the other books and accounts kept by the agent of the company at the depot were burned in the depot in the month of October or November, 1883.

About December, 1883, J. D. Beardsley fixed for himself a salary of $200 per month and for me a salary of $100 per month. He did not consider me in the matter or ask me if that amount was satisfactory to me or not. He told me about that time that he had instructed Mr. Carruth to open accounts against each of us, and that when I wanted money to draw it from Mr. Carruth instead of from the agent. The first I knew about the amount of salary he had fixed for me was in January of 1884, and one day in the depot at Hope, he being on his way to St. Louis to complete some transaction with Captain Hayes, I remonstrated with him in regard to the amount allowed me. He replied that our general expenses (meaning
122 salaries of general officers) were now larger in the aggregate than those of the Missouri Pacific and other large roads in proportion to the gross earnings of our road, and he did not want to increase the amount, as he wished to make a favorable showing in our monthly statements, which were forwarded regularly to Capt. Hayes for his inspection, and expressed it that the more favorable the showing we would make the more likely they would be to assist us with money to build the road south of Hope. About a year or more later than this, or some time in 1885, I again remonstrated about the amount of salary, but was again met with the same argument as before. I, however, did not urge the matter any further, from the fact that the amounts as fixed corresponded with our respective interests in the road, and I looked on it in the nature of a dividend on my interest, our original agreement being that we should both devote our time and energy to the advancement of the work of the company. We had an arrangement with the Little Rock Oil and Compress Company, commencing with the year or season of 1884, under which we received money from them for the purchase of cotton seed to be shipped to them in car-load lots. They fixed the price which we were to pay for seed from time to time, and upon receipt of the seed in Little Rock they gave us credit for the amount of seed received at an advance of about $1 per ton, which advance was intended to cover cost of weighing and loading the seed into the cars, and also any shrinkage that might occur in the weight. There resulted from this source for the season of 1884 and 1885 a profit to the company of something over $500. This profit was divided between us in proportion to our respective interests in the road, viz., to J. D. Beardsley two-thirds and to myself

one-third. The vouchers for the amounts which were passed to each of our accounts are more particularly referred to and set forth in the deposition of W. H. Carruth. The same arrangement existed with the oil and compress company for the season of 1885 and 1886 just passed, and the books of the company show a profit on the seed transactions for this season of about $915, which amount has been appropriated by J. D. Beardsley to his
123 own private use and benefit since the commencement of this action; and the books further show the payment of the said $915 to J. D. Beardsley by W. H. Carruth, treasurer, during the months of April and May last passed. There was also a contract made by J. D. Beardsley with the Pan Electric Telephone Company, under the provisions of which the Pan Electric Telephone Company were to furnish telephones at a stated price each, to be used on the line of the Arkansas and Louisiana railway and in territory tributary to it in the States of Arkansas and Louisiana. At least four of said instruments have been purchased from said telephone company, and about twenty-seven miles of telephone line has been constructed, all of which have been paid for out of the funds of the said railway company, as shown by its books. The said telephone line is constructed upon the telegraph poles of the Arkansas and Louisiana Railway Company, and was put up by the regular employees of the said company. The greater portion of said construction was superintended and directed by me.

An agreement was entered into between J. D. Beardsley, acting on behalf of the Arkansas and Louisiana Railway Company, and certain citizens of the town of Nashville, in Howard county, Arkansas, under the provisions of which certain lands, to wit, about 320 acres, more or less, were donated to said railway company for the purpose of securing the extension of the said railway company to the town of Nashville and the establishing of a depot upon said land. This agreement was made about the summer of 1883, but the deed to said lands were not made until 1884 or 1885, and were then made in the name of J. D. Beardsley.

There has also been built upon a portion of the said land in the town of Nashville, Arkansas, a large and commodious hotel building, costing over $5,000, and furniture has been purchased of the value of ——, all of which have been paid for out of the funds of the said Arkansas and Louisiana Railway Company. There are also other lands which have been purchased by J. D. Beardsley from the St. Louis, Iron Mountain and Southern Railway Company and from other persons, all of which have been
124 paid for out of the funds of the Arkansas and Louisiana Railroad Company, but are now standing in the name of J. D. Beardsley, to wit, lot 8, block 13, and lots 5, 6, 8, 9, and 10, in block 20, all in the town of Hope, in Hempstead county, and all of blocks 83, 104, 131, 138, and 146, in the town of Washington, in Hempstead county; also the W. ½ of S. E. S. W. and E. S. W. S. W. of section 30, township 10 south, range 25 west; also the S. W. N. W., the N. E. S. W., and the S. E. S. E. of section 31, township 10 south, range 25 west; also the S. W. N. E. and the N. W. N. E. and N. ½ S. W.

of section 2, township 12 south, range 25 west; also the S. E. of S. W., section 30, township 9 south, range 26 west; also the N. E. S. W, the S. W. S. W., the E. N. W. S. W., of section 30, township 9 south, range 26 west; also the S. W. of N. W. of section 4, township 10 south, range 26 west, and part of S. W. S. E. of section 32, township 9 south, range 26 west. All these lands and, in fact, all lands now standing in the name of J. D. Beardsley in the counties of Hempstead and Howard, excepting only the lots upon which his residence has been erected, in the town of Washington, are the property of and have been paid for out of the funds or earnings of the Arkansas and Louisiana Railway Company.

There has been realized in all from the sale of the old material of the Washington and Hope Railway Company the sum of about $14,000, all of which when received was used in the construction of the Arkansas and Louisiana railway; but about the sum of $5,100 was wrongfully charged to the construction account of said Arkansas and Louisiana railway and credited to the personal account of J. D. Beardsley, as appears by the books of said Arkansas and Louisiana Railway company.

There is also a credit to J. D. Beardsley on the books of the said railway company of $433 which purports to be the proceeds of a check received from the Baltimore and Ohio Railroad Company for the personal account of J. D. Beardsley. The said check was received at Hope through the Southern Express Company, and was payable to the order of J. D. Beardsley. It was for a claim against the Baltimore and Ohio R. R. Company which was collected by a claim agent in Indianapolis. This check was received about February 6th, 1882, and there was a C. O. D. charge of $125.00 paid to
125 the Southern Express Company on the receipt of said check. This check was never, so far as I can learn from a careful examination of all the books of the company, received and used by the Washington and Hope Railway Company or any of its successors, but was taken East by J. D. Beardsley and collected and used for his own personal account and benefit. The books do not show any charge to J. D. Beardsley's personal account of the $125 paid for the agent's commission for the collection of the said check. I think the proceeds of this check were used by J. D. Beardsley in moving his family from West Va. to Arkansas. He remarked to me afterward that he did not see how he could have moved his family if he had not received this money from the Baltimore and Ohio R. R. Company. I never saw any balance-sheet of the books of the Arkansas and Louisiana Railway Company at any time or any other statement made from said books, except the weekly or monthly statements of earnings. I don't think I ever looked into the said books more than two or three times before January 1st, 1886.

If there was ever a balance-sheet made of said books I never knew it or saw it, so far as I now remember. There was due to the Washington and Hope Railway Company from citizens of Washington and Hempstead county at the time I purchased my one-third interest, on Jan. 1st, 1882, on account of bonus notes, about $6,000.

Most of these notes have since been paid and the proceeds have been applied to the payment of the debts of the Washington and Hope Railway Company or used in the construction of its successor, the Arkansas and Louisiana railway.

During the season of 1883 and 1884 the cotton-seed business was handled by a man named Davis for the Little Rock Oil and Seed Company. His transactions were not satisfactory to the oil company, and J. D. Beardsley told me that Major Haynes, manager for the oil company, had asked him to let our agents at each depot receive and pay out the money for all seed purchased on the line of our road and to attend to the weighing *to* the same. He said that, as Davis had made his arrangements for that season, he did not think it would be fair to Davis to take the matter out of
126 his hands then, but that he had agreed with Major Haynes that we would handle all the seed purchased on our road after that season.

The records of the net and gross earnings of the road previous to November of 1883 were burned in the depot at Washington about that time, but the following statements of gross and net earnings for the years 1882 and 1883 are obtained from Poor's Manual of the railroads of the United States, and are presumed to be correct; said statements were furnished to Poor's Manual for publication by J. D. Beardsley previous to the burning of the depot, in November, 1883:

Earnings — yr. end. Dec., 1882.—Gross		12,315 92
Exp.		6,250 00
Net		$6,065 92
Earnings for yr. end. Dec., 1883.—Gross		$20,000
Expense		12,000
Net		$8,000
Earnings for year end. Dec., 1884.—Gross		$38,402 40
Exp.		13,578 56
Net		$24,823 88
Earnings for year end. Dec., 1885.—Gross		53,573 44
Expenses		19,143 56
Net		$34,429 85

During the period from January 1st, 1882, until about Jan. 1st, 1885, I worked on the road in various capacities. I was recognized as assistant superintendent of the road, and no employee ever to my knowledge refused to obey my orders as such. During the spring of 1882 about three miles of the narrow-gauge road-bed was washed away, which stopped the running of trains for a period of about one month. I assisted to rebuild and relay the track on this three miles of road, and helped to rebuild all of the bridges upon it.

Nearly all that summer I supplied the place of engineer on the narrow-gauge engine, taking on a new fireman and keeping
127 him with me until he was able to run the engine. In the fall of 1882 I took charge of the broad-gauge engine which was then being used on construction, again taking on another fireman and learning him to run the engine. When not upon the engine I was continually upon the road, either as conductor or upon the construction work. I superintended the laying of nearly all the broad-gauge track between Hope and Washington, and much of that between Washington and Nashville. On several occasions I have been out upon the road from twelve o'clock noon until after daylight the next morning, working incessantly without food all that time. On two of these occasions I suffered intensely from the bitterness and inclemency of the weather. On many other occasions I have worked nights and long hours. I never asked or received any compensation for any night work or over time. The reason that I did not demand pay for night work or extra time was because I considered that I was working and improving my own property, and had I owned it entirely by myself I could not have worked harder or taken a greater interest in it.

All the regular employees of the company demanded and received extra pay for night work or for extra time over ten hours per day.

I never worked as hard in my life as I have worked on this road during the time from 1882 to 1885. After January of 1885 the work was not so laborious or incessant, the road then having been completed to Nashville, Ark., its present terminus. There was received from the sale of narrow-gauge iron taken out of the track of the Washington and Hope Railway Company as follows, viz:

7⅞ miles, 22-lb. iron, at $35.00 per ton of 2,120 lbs.	$9,429 00
7 " fish-plates & bolts, 3,080 joints, at 25 cts.	770 00
25,000 lbs. spikes, at 2 cts.	500 00
Amount taken to J. D. B.'s acc't for 2⅞ miles track	4,732 50
Total from sale of N. G. track	15,431 50
Amount collected from bonus notes unpaid Jan. 1, 1882, about	5,000
128 Amount of cash sale of land grant which was paid to D. E. Garrison & Co. on account of steel rails for A. & L. Co.	7,000
There were other land sales made from time to time, amounting to over	1,000
Total	28,531 50

The above figures do not purport to be exact, but they will not vary materially from a correct statement of the sales as made. The first sales of 22-lb. iron made to the Lampasas Street railway were made by me, J. D. Beardsley at the time being absent either in New York or St. Louis. As tending to show the nature of the business relations existing between J. D. Beardsley and myself previous to January 1st, 1882, I herewith attach the original or part of a letter

dated October 8th, 1881, and received by me while in the city of New York, which said letter was signed by John D. Beardsley, the defendant herein, and the part hereto attached is in his proper handwriting.

The said part I found among some old papers after the institution of this suit, just in the condition it is now. I have made diligent search for the portion of said letter which is missing, but have failed to find it. I do not know how it came to be torn or cut or what became of the missing part, but I suppose that my children, who were in the habit of cutting up papers into paper dolls, and so forth, found about the house, cut the said letter. Recollection about the contents of the missing part of said letter is not very distinct, but it is that there was nothing in said part inconsistent with the part hereto attached, marked Exhibit "B," and made a part hereof.

And I also attach hereto as Exhibit "C," and make it a part of my deposition, a letter received from J. D. Beardsley by me, dated at Washington, Ark., Oct. 24, 1881, which is in his handwriting, with his proper signature thereto subscribed, which letter was addressed to me at the city of New York.

I also hereto attach and make it a part of my deposition—
129 that is, the parts of said letter which refer to the subject-matter of the litigation in this suit—a letter written by J. D. Beardsley to me, dated at Washington, Ark., February 7th, 1886, which is in the handwriting of John D. Beardsley, with his signature thereto subscribed, and marked Exhibit "D."

PAUL F. BEARDSLEY.

EXHIBIT A TO PAUL F. BEARDSLEY'S DEPOSITION.

W. H. Carruth, president. J. D. Beardsley, superintendent.

Superintendent's office, Washington and Hope Railway Company.

WASHINGTON, ARK., *Jan.* 1, 1882.

I hold of the stock of the Washington and Hope Railway Company thirty-three thousand two hundred and fifty dollars, or thirteen hundred and fifty shares, which is sold to Paul F. Beardsley and which, though standing in my name, belongs to him, subject to a payment of eight thousand dollars, with interest at same rate and from same date as interest on my purchase of Mr. Alderman's stock.

(Signed) J. D. BEARDSLEY.

Witness:

J. H. BURT.

130 EXHIBIT "B."

W. H. Carruth, president. J. D. Beardsley, superintendent.

Superintendent's Office, Washington and Hope Railway Company.

WASHINGTON, ARK., SATURDAY, *Oct. 8th*, 1881.

DEAR PAUL: Yours of fourth received and noted. I have no doubt

that if we can get the right parties in it will be as easy to get $10,000 per mile as a less sum. The Texas and St. Louis is being bonded $10,000 per mile. * * * I have received no decisive answer from Mr. Hayes, yet I enclose his last letter. I saw him as I went home and was to see him as I came back, but did not. I wrote him, repeating my former proposition and urging some conclusion. His letter crossed mine. It should be borne in mind that there is $12,000 owing for iron. We will be able probably to pay 5,000 of this from bonus bonds; bal. would have to be paid. The time is exceedingly favorable for construction here. Nothing else that I think of.

Affectionately your bro., J. D. BEARDSLEY.

W. H. Carruth, president. J. D. Beardsley, superin't.

Superintendent's Office, Washington and Hope Railway Company.

WASHINGTON, ARK., *Oct. 24th*, 1881.

DEAR PAUL: Yours of 20th received, with specification for engine. It won't do for us to give orders for rolling stock until we see where the money is to come from. Of course, if we make no money arrangement we can't buy at present. The project to Monroe
131 ought to command the money. It is of itself a grand scheme, and it is the first step to one much more grand which lies beyond it. If we can ever accomplish the first we will at once be able to command any amount of money for further developments. The road we touch at Monroe is the Vicksburg and Shreveport, a part of the Earlenger system, the same that took in the Cincinnati Southern. Mr. Fred. Wolf, 35 William street, New York, is their financial agent. I have written him to-day to see if he will help us place the bonds. The best information I can get is that we would carry to Monroe 150,000 bales of cotton first year. I said nothing to Mr. Wolf of continuing the road to Vidalia, as I think he would be more likely to help it to stop at Monroe. It would be an immense feeder to his line. I am in correspondence with New Orleans people and asking them to get the board of trade and cotton exchange to take up the matter. We ought to get from them $250,000, but of course they would only pay when the road is built, but it would help greatly in getting the money. I am in correspondence with Magnolia. Paramore (Texas & St. Louis) has passed them and they are furious. They will give all they can, but I doubt if more than 20,000 can be got from them. Large donations of land can be got. I think of changing name of road to Arkansas Southern or Arkansas and Louisiana railway, and if possible will charter to do a railroad, express, and telegraph business. I note what you say about coming home. If you could at all arrange to buy Alderman it would be best, but if not I will try to make the road pay you $75. Of course, you would be worth more than $25 more than any one we could get. The question is what the road as it goes now can stand. We will try it anyway. The work is laborious and of that kind you ought not to have to do. What I mean is if you go on the road as conductor you have to help load and un-

load cotton and freight. I don't mind doing this myself at all, but I hate the idea of your doing it as an employee. If nothing better can be done now we may work up to better. I hope you
132 will be able to make some money arrangement, but if you can't, I will try, first going over the proposed route and getting what donations we can. I am to have a meeting of directory to amend charter, authorize bonding of road, issuing of stock, and appoint me general agent to handle bonds, stock, and contract for construction, &c., &c. I will finish up after the meeting.

Affectionately your bro., J. D. BEARDSLEY.

Have just had meeting of directory and ordered extension of the charter, bond the road for $10,000 per mile, and issue stock of amount of $10,000 per mile, and given me authority to carry out the resolutions, handle the stock, bonds, make contracts, and do all things necessary, with power of attorney. The charter will be filed with secretary of state to-morrow. In haste.

Yours aflt., J. D. B.

EXHIBIT "D."

WASHINGTON, ARK., *Feb. 7th*, 1886.

DEAR PAUL: Yours of the 1st was received yesterday. You seem to view this matter from two points, one a business and the other a personal standpoint. As I have in my transactions with you undoubtedly made business principles second to personal or sympathetic feelings, I do not intend to complain of your position. I desire now, however, to test the matter on a business basis and to do what is just and equitable. Outside of the business part of your letter it may be proper and advisable for me to reply to or comment on some portions. This I will endeavor to do briefly, candidly, and without feeling. As we evidently differ somewhat in conclusions, it will be best to look over the facts on which our conclusions rest and see to what they lead. In 1879 Mr. Alderman and myself undertook to build and did build in that and the next year a narrow-gauge railroad between Hope and Washington. The
133 understanding was that each should put in what he could; that the stock should be equally divided, and that the one who put in least should pay the other enough to make his share equal. Including the material I got from Tennessee, I put in considerably more than Mr. Alderman did. Two years after we started to build this road you had come from the Pacific coast and were in New York city. You wrote me from there, saying you were out of available means and could find nothing to do, and asked me if we could not give you employment here. I replied that I did not think we could afford to employ you at any price that would justify you in coming. You then wrote back, urging me to employ you, saying that surely you would be worth $75 per month to us here, and that if I would employ you at that price it would enable you to make bread for your family. While I doubted the ability of the road to carry then any more than it had, I felt it then imperative upon me

to comply with your request, and I wrote you to come. Some time after this Mr. Alderman desired to sell me his interest in the road, but I declined to purchase it. In the course of the next six months I declined it several times. Later Col. Paramore, of the Texas and St. Louis railway, wrote me that Mr. Alderman had offered him his interest at $12,000, and that he was considering the purchase. Finding this, if carried out, would involve us in trouble with the Iron Mountain R'y, I wrote Mr. Alderman that day, saying I would take his interest at $12,000, and by return mail he advised me that he considered it sold to me. After I had purchased this interest you importuned me to let you have it. This I declined to do, but I finally consented to let you have two-thirds of the purchase, you to pay me $8,000, with interest from the time of my purchase and at same rate I paid Mr. Alderman, stock to remain in my hands until paid for. Previous to this time the road had been legally valued at $100,000, and stock to that amount had been issued or was ordered to be issued. At the time of your purchase you represented that you expected to get a considerable sum of money from a mine in California and you would pay this on the purchase. So far, however, I believe you have not paid anything. Some time afterwards, knowing
134 that, as our understanding was purely verbal, you would have no rights whatever in case of my death, I made a written memorandum showing that you were entitled to one-third of the stock then standing in my name or $33,333, subject, however, to a payment of $8,000, with interest as aforesaid. This memorandum I gave you, and I presume you still have it. Here the business part of our transactions, so far as interest in the property is concerned, rests. It is true that since that time the stock on each mile of the road has been doubled. If upon a fair consideration it should appear that the change of gauge and of rail, &c., &c., has not increased the value of that part of the road in proportion to the increased stock you should have the benefit that you appear entitled to. In regard to your assertion that after a certain time you considered you were not working for a fixed salary, &c., I can only say I know of no authority whatever for any such assumption. The facts are that you urgently solicited the place at $75 per month, and I reluctantly assented to your request, being really afraid that we could not afford it. After the first two or three months you steadily overdrew your salary—some months very little, some months very considerably. My idea at first was that you were at a great deal of expense at starting, and that you would catch up. (Introduced as evidence from beginning down to × on this page.) I was strengthened in this belief by the fact that with a large family my expenses at Washington had never exceeded $60 in any one month, exclusive of rent. I regret now that I did not then speak to you about the matter, but I presumed then and I think now you knew just what you were drawing, and I supposed you needed the money or you would not have taken it. After Mr. Alderman's interest terminated I did not really care much about it, so far as the money was concerned, provided the road earned enough to pay expenses. As time went on I thought a good deal about it, and finally decided

to put it and you in better shape. With this view I advanced your salary to $100 per month, and to prevent further overdraft, which I thought would thereafter surely be unnecessary, I directed that no more money must be drawn from agents, but that the account must be kept or paid at Carruth's. At the same time I decided
135 that no account should be taken of the amount overdrawn up to that time. As I was under the impression that the furniture, &c., had been paid for by the company or by the money which constituted in part the amount overdrawn, I looked upon that matter as closed with the rest. It is very unfortunate, in view of what has recently occurred, that I did not fully discuss this with you at the time. I was prevented from doing so entirely by the feeling that as I was giving you whatever the amount might be it would not be good taste for me to dwell upon it to you. Besides this, I gave you credit with a thorough knowledge of what you were about and discernment enough to take the situation in fully without my pointing it out to you.

Almost immediately after you began to get $100 per month and keep your account at Carruth's I found when we were in need of all the money we had or more and called for our balance there was held against us at Carruth's a balance which was overdrawn on your account then. This continued to be the case for more than a year; perhaps for nearly two years. I disliked very much to say to Mr. Carruth that we would not recognize or allow this item, which in the main grew steadily larger, lest he should think there was something wrong about you financially. In the latter part of 1884 I instructed Mr. Carruth to charge the company with whatever amount might be necessary to balance your account and to send you the receipted bill as a Christmas gift from the company. I also said to him that thereafter your account would be a matter entirely between you and him. Since that time, with one exception, I have known nothing about your account with Carruth.

Referring now to your complaint that while you were a general officer you have been obliged to do work sometimes of engineer, sometimes machinist, sometimes as car-builder, &c., and that you have had to work at night and in cold and rain and have never been paid for it, &c., you ought certainly to be aware that the position you occupied as a general officer is one which this road has no need of whatever; in fact the place was made for you. I do not at all mean by this to underrate the work you have done nor the value of your services; both have been considerable; but if you have done the work of an engineer or machinist or carpenter and receive twice the
136 compensation which they get for doing it I do not see from a business standpoint why you should complain. It might be worth considering, also, that a large part of the time at Nashville you have very little to do that could not be done in this office without additional expense. It is worth remembering, also, that when you have been absent on your own business, which you were on one occasion at least for more than a month, you were paid just the same as if you had been here. If you were to find something more profitable to do and were to leave the road do you have any idea another

man would be employed and sent to Nashville at a salary of $100 per month, with fuel, lights, and house rent put in?

Answering your question as to why I did not consult you in reference to the salaries, &c., because as far as I knew then or know now there was no reason why I should do so. In your case you were employed at a salary agreed upon. Seeing that you were living beyond your salary and going steadily behind, I advanced it. While uninfluenced by any other than business motives, I might not have done this. I considered it then, and I do now, as entirely within my discretion as manager or superintendent of the road to do so or not to do so. The fact that you individually had bargained to purchase stock or had purchased and paid for stock in the road would not, I think, enter into the matter at all. So long as I am in charge of the road I think I have the right to pay every employee such a price as I may think proper and reasonable. This, I think, gives my views on about all the points you present. I do not see in what way Judge Williams' services could be utilized, as the question is simply one of delivery of stock. I am ready to comply with my portion of the understanding at any time.

It is perhaps hardly necessary for me to add that I do not agree with you, as you said you believed I would, that any statement in my letter to Al. was incorrect, nor do I yet find any statement in the subsequent one to you erroneous. I think every statement made in both is fully borne out by facts so far. I would be glad to have any further facts you have submitted and to have your views fully
137 with any proposition you may think proper to make with a view to closing the matter up permanently.

Afft. your bro., J. D. BEARDSLEY.

(Endorsed:) Filed July 3rd, 1886. Ralph L. Goodrich, clerk.

W. H. CARRUTH, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the action aforesaid, did then and there on his oath aforesaid depose as follows, to wit:

I am fifty-one years of age, and reside in the county Hempstead, in the State of Arkansas. I am personally acquainted with the complainant, P. F. Beardsley, and the defendant, John D. Beardsley. I am now, and have been since the organization, president and treasurer of the Arkansas and Louisiana Railway Company, and a director thereof.

I was a director in the Arkansas and Indian Territory Railway Company from its organization up to the time it was sold to and merged into the Arkansas and Louisiana Railway Company. I was a director in and president and treasurer of the Washington and Hope Railway Company from the time of its organization up to the time it was sold to and merged into the Arkansas and Indian Territory Railway Company. I was present, so far as I can remember, at all the meetings of the board of directors of the Arkansas

and Louisiana Railway Company as well as those of the other companies before mentioned. I neither own nor claim to own any of the property or stock of the Arkansas and Louisiana Railway Company other than a nominal stock sufficient to qualify me to act as a director in said company. Several years ago the said John D. Beardsley said to me that he wanted to assist his brother, the said Paul F. Beardsley, and that he had sold him a one-third interest in one hundred thousand dollars' worth of stock for a consideration of eight thousand dollars and subject to the payment of the said eight thousand dollars.

138 I do not remember of seeing the said Paul F. Beardsley at any meeting of the Arkansas and Louisiana Railway Company more than once. From my knowledge of the road and its workings I regarded the said Paul F. Beardsley as a very useful man to the road, and in addition to the usual hours worked by employees he went out day or night and in all kinds of weather, and I never knew of any extra pay being demanded or paid to him for extra services; but other employees of said road demanded and received extra pay for extra services. As treasurer of said Arkansas and Louisiana railway I paid vouchers when certified by the auditor in same manner when certified by said Paul F. Beardsley as when certified by said John D. Beardsley. Pay-rolls were also treated by me in like respect, whether certified by said Paul F. Beardsley or John D. Beardsley.

On September 10th, 1885, I paid two vouchers, each certified by the auditor and each approved by John D. Beardsley, superintendent, one numbered 561, in favor of P. F. Beardsley, for one-third of the profits of handling cotton seed in the season of 1884 and 1885, and the other numbered 560, in favor of John D. Beardsley, for two-thirds of the profits in same transaction for the sum of $264.08. About December, 1883, I was instructed by J. D. Beardsley to enter up at the end of each month to each, his and P. F. Beardsley's, account the sum of $200 to J. D. Beardsley's account and $100 to P. F. Beardsley's account for their salaries for each month. All other salaries were paid on pay-rolls or vouchers.

I have been intimate and personally acquainted with P. F. Beardsley since he came to reside in the town of Washington, and our families have been intimate, frequently visiting each other, and I have known P. F. Beardsley as a moral, prudent, and temperate man and practicing economy in his living as much or more as people of their refinement and circumstances. As president and treasurer I kept the account of the Washington and Hope railway and of the Arkansas and Louisiana Railway Company. I have kept them in various forms and shapes, and I have kept account with John D. Beardsley. In regard to the conversation with John D. Beards-

139 ley as to the selling P. F. Beardsley one-third of the stock of the railway, I think the capital stock was one hundred thousand dollars. I don't remember where that conversation took place, but I think it was soon after the sale of the paper which John D. Beardsley gave to Paul F. Beardsley. I refer to the memorandum dated 1st January, 1882. I now refer to the "treasurer's railway book,'

and I find that there was an account with John D. Beardsley, but I do not find any account with Vinton Alderman, and I never kept any with him. I cannot say how much was realized from the sale of old iron, etc., which was brought from Shelby county, Tennessee. In regard to the Nashville Hotel, the books show that the amount paid for that hotel and charged to Arkansas and Louisiana Railway Company's account was $2,948.15. When the hotel was commenced I was instructed to keep an account with "The Nashville Hotel," and on January 13th, 1886, I closed that account and charged the amount, $2,948.15, to the Arkansas and Louisiana railway account. This amount was paid out of the earnings of the Arkansas and Louisiana Railway Company. I mean by that it was paid out of the "railway credit" account, but this account consisted of many other credits besides railway earnings. It included freight earnings, iron sold, land sold, land traded, etc. I could not say how much was realized from lands donated to the railway company by the State. The auditor of the railway might be able to tell. I heard that there was a sale of these lands made to a Mr. Gates, but I don't know anything as to the amount, but the auditor of the railroad could tell. I could not say how much — paid J. H. Bell for lands. I have paid some amounts to him, but they would not represent all that was paid. I could not say how much I have paid him. I could not say how much was paid Rector and Towell, of Nashville, for five acres of land there, and I cannot say how much was said for telephone contract. Regarding Major J. D. Beardsley's house at Washington, the account was kept in the same way as that of the Nashville Hotel. The amount expended was $2,765.57, and on July 31st, 1885, I charged the Arkansas and Louisiana Railway Company with that amount and credited it to "construction account." This "construction account" had
140 been kept to represent the cost at J. D. Beardsley's house at Washington. Referring to the treasurer's railway book, I find that there were paid out the following amounts: On the 8th of April, 1881, $67, paid T. Essex on land account; on the 6th of July, 1881, $128.65, paid T. Essex on land account; on the 16th November, 1882, $271.16, paid Powers on land account; on the 5th January, 1883, $307.85, paid T. Essex taxes to pay for C. E. Mitchell's land. These amounts were charged to J. D. Beardsley, and prior to the 6th October, 1882, his account represented all the railway interests. There was no account against the railway company up to that time. I don't know what lands these amounts were paid for, but the amounts were paid out of railway funds. By "railway funds" I mean sums received from various sources—from freights, traffic, lands sold, donations, etc. All these are embraced in what I have called "railway funds" and were credited to J. D. Beardsley's account. On referring to "treasurer's railway book" I find on page 116 that on October 6th, 1882, I paid cash to Jno. Bell $400.00, but I cannot say what it was for. I find on page 118 that on December 27th, 1882, I paid Jno. Bell $825.00; I cannot say what for, but my recollection is that it was on a land transaction. My impression in regard to this $825.00 having been paid on a land

transaction is gained from the fact that I have heard J. D. Beardsley, A. B. Williams, and Jno. Bell speak about the matter—I mean about Jno. Bell buying land for the railway. This amount was paid out of "railway funds" in the same way as the previous land transactions I have referred to.

Cross-examined:

My books show that on the 29th September, 1879, was the first transaction I had with J. D. Beardsley. I think that was when he first came to Washington. He may, however, have come and gone previous to that time. He came then in regard to the purchase of the Washington and Hope railway. I think he had been
141 down before to see about lands in this part of the country and then went home, and hearing about the condition of the Washington and Hope railway wrote to us. He commenced work on the Washington and Hope railway, I think, in the fall of 1879, and completed the narrow-gauge road from Hope to Washington some two or three years afterwards. On the 18th April, 1880, I credited J. D. Beardsley with $25.60 for railroad receipts, and presume that that was the date of the opening of the road.

Question. You state in your examination-in-chief that from the 18th day of September, 1879, until the 6th day of October, 1882, the business of the railroad was kept in the account of J. D. Beardsley, and that from the 6th October, 1882, a separate account was kept with the Arkansas and Louisiana Railway Company. Please state why the change was made from "J. D. Beardsley" to the "Arkansas and Louisiana Railway Company," and what was embraced in the Arkansas and Louisiana railway account.

Answer. It was suggested to me by J. D. Beardsley that to prevent confusion it would be better to open an account for the "Arkansas and Louisiana Railway Company" as a construction account to represent moneys received and paid out on that account, but at the same time the account with J. D. Beardsley was not closed, but continued to run on, representing the freights and business of the road outside of construction.

Question. Was the account of J. D. Beardsley as "lessee" under his construction contract with the Arkansas and Louisiana Railway Company embraced in the account kept in the name of the "Arkansas and Louisiana Railway Company?"

Answer. Yes; both of the accounts, "J. D. Beardsley" and "Arkansas and Louisiana Railway Company," represented J. D. Beardsley's business. I did not know anybody else in the business but J. D. Beardsley. Everything was done under his directions. Both accounts, his own and that under the name of the "Arkansas and Louisiana Railway Company," were run under his directions and under his control.

Question. Did the account of the Arkansas and Louisiana Railway Company represent any transactions outside of J. D. Beardsley as lessee under his construction contract?

142 Answer. Yes; that account was opened 6th October, 1882, and represented J. D. Beardley's construction account up to

the time of the railway company making the construction contract with him as lessee. That account presents the only account now kept with the railway.

Question. The records show that the Washington and Hope railway was completed and received by that company on the first day of January, 1881. Please state what was the next work done on the road in the way of extension and improvements after its completion.

Answer. The next work done was the widening of the gauge between Washington and Hope and the grading of more railway north of Washington. This work was begun, speaking from recollection, in 1882 or 1883. The money for these improvements was handed to me by J. D. Beardsley and was, I think, borrowed from the Iron Mountain Railway Company. The position of J. D. Beardsley as an officer of the road was at first director in charge and afterwards director and superintendent. P. F. Beardsley's position was that of assistant superintendent, and he did general work. In the construction contract which was entered into between the Arkansas and Louisiana railway I never knew of any one else having any interest in the road or in that contract than J. D. Beardsley. There may have been contracts with the Iron Mountain railway or with Paul F. Beardsley, but, if so, I never knew of it. I knew of no other interest than that of J. D. Beardsley in that contract, and I voted for it as chairman and director so understanding it. The hotel building at Nashville referred to in my examination-in-chief was commenced about first of November, 1884, and the residence of J. D. Beardsley at Washington, also referred to in my examination-in chief, about first April, 1884.

Redirect examination:

The construction contract was entered into between J. D. Beardsley and the Arkansas and Louisiana railway on May 22nd, 1883.

The separate account kept with the Arkansas and Louisiana
143 railway was opened on 6th October, 1882, and money was received at that time from the Iron Mountain railway. There was $2,000 received on the 2nd day of October, 1882, and credited to J. D. Beardsley's account. We saw that confusion would arise from so many transactions being kept in one account, and at the request of J. D. Beardsley I opened an account in the name of the Arkansas and Louisiana railway as a construction account, and that $2,000 was transferred to that account. This last-mentioned account continued to represent construction until J. D. Beardsley became lessee, when, under the same title, it represented J. D. Beardsley as lessee and embraced all the business of the road. There was no administration or liquidation of the old business. J. D. Beardsley's business as lessee was simply continued on the books in the account of the Arkansas and Louisiana railway, and that account then represented all the railway business. My books show no account of "J. D. Beardsley as lessee." The Arkansas and Louisiana railway account simply ran on in the same way, representing

J. D. Beardsley. If there were any other interests in the road *other* than those of J. D. Beardsley I don't know of them. Nobody ever said to me that any one else had any interest. There was no change in the name and style of the Arkansas and Louisiana railway account opened on the 6th day of October, 1882, but there was a change in the method of keeping it. It was opened to represent "construction account," and there was a separate account in the name of J. D. Beardsley, representing freights and other earnings and running expenses, which was continued up to about June 1st, 1883, when we stopped it as representing railway business at all, and all the railway business went into the account headed "Arkansas and Louisiana Railway Company."

I only know from hearsay what security J. D. Beardsley gave the Iron Mountain railway for money borrowed. I don't remember when J. D. Beardsley first made contract for getting money from the Iron Mountain railway, but I think that it was in the summer of 1882. J. D. Beardsley told me, I think, at first that he in-
144 tended to give them an interest in the road, or that he had done so, and afterwards told me that he would give them first-mortgage bonds on the road as collateral security.

Recross-examination:

When I referred in my re-examination to money received from the Iron Mountain railway I meant that I received it from J. D. Beardsley, but understood that that was where it came from, but did not know of my own knowledge. It came by express to J. D. Beardsley, and was handed to me by him and others. From the time that J. D. Beardsley took charge, in September, 1879, till 6th October, 1882, the accounts for the operation and running of the road were kept in the name of J. D. Beardsley. In October, 1882, a construction account was opened in the name of the Arkansas and Louisiana Railway Company. That account consisted of the moneys paid in to me by J. D. Beardsley and the moneys paid out on account of construction. Some of it may have been paid out for other purposes. The object of separating the accounts in October, 1882, was to prevent confusion. The accounts of John D. Beardsley and of the Arkansas and Louisiana Railway Company were kept separate until May, 1883, when the construction contract was entered into with J. D. Beardsley.

And further deponent saith not, and hath signed.

W. H. CARRUTH.

(Endorsed:) Filed July 3rd, 1886. Ralph L. Goodrich, clerk.

145 STATE OF ARKANSAS, *County of Hempstead:*

EDGAR HOLMAN.

Edgar Holman says: I am twenty-four years of age, and reside at Nashville, Arkansas; am conductor on the Arkansas and Louisiana railway; have been so employed for about two and a half years. I

was employed by J. D. Beardsley. When I came here first Mr. Paul Beardsley lived at Washington, Ark.; at that time I also lived at Washington. Paul Beardsley went to live at Nashville, Arkansas, at about the same time that I did. He was assistant superintendent of the road. My understanding was then and has always been that he was an employee of the road and on a salary just as I was myself. Everything connected with the business of the road seemed to justify this view. He was as much subject to the orders of J. D. Beardsley as I was, though he had greater authority than I had. On more than one occasion I have known orders made by Paul Beardsley to be suspended or reversed by J. D. Beardsley, and I never heard Paul Beardsley make any question of his brother's right to do so. On one occasion Mr. Paul Beardsley had given orders that local bales of cotton should be carried in the baggage compartment of the combination passenger car. This was done until it came to J. D. Beardsley's notice, when he told me not to take cotton into the baggage compartment any more. I told him that I had been instructed by Mr. Paul Beardsley to do so. He replied, "It does not make any difference who instructed you to do so; do not do it any more." Within a short time after this Mr. Paul Beardsley instructed me to stop at Ozan and take some cotton into the baggage compartment. I declined to do so. He asked me, "Why?" and I told him that Mr. J. D. Beardsley had forbidden me to do it. He did not have anything more to say. Mr. Paul Beardsley has never been in control of the operation or construction of the road since I have been on it, excepting when he was left temporarily in charge, in the absence of J. D. Beardsley. Mr. Paul Beardsley always seemed to me to have a reasonably easy job. When we had a wreck or trouble on
146 the road he went out with a party and worked to clear the road and get everything started, but I did the same thing, and so did the sectionmen. About the 15th of February, 1886, Mr. J. D. Beardsley informed me that Mr. Paul Beardsley was no longer in the employment of the road. He instructed me at the same time that Mr. Paul Beardsley and all of the members of his family were to be allowed to ride over the road in the future, as they had always done in the past, without being asked for pass or fare or ticket. I asked Mr. J. D. Beardsley whether they would be allowed to take other persons over the road free. He said, "No; only members of Mr. Paul Beardsley's family."

Paul Beardsley's family had not been in the habit of taking outside parties with them free, though they often had friends with them on passes. Within a day or two after Mr. J. D. Beardsley giving me these instructions Mr. Paul Beardsley came down from Nashville on the morning train and told me that his wife would be down on the afternoon train, and he told me that if my instructions required me to collect fare for bringing her down to pass her down and he would pay her fare; to which I replied, "All right." When Mrs. Beardsley came down on the afternoon train she brought two children and a negro woman with her. I did not ask any fare from them, but when I saw Mr. Paul Beardsley I told him that he owed me a fare for the negro woman that his wife had brought down, but that

no fare was to be charged for his wife. He drew up the form of a receipt for the fare, which was $1.25, and requested me to sign it. I objected and told him it was not usual. He said that if I would not sign the receipt he would not pay the fare. As I had brought the woman down on the faith of his paying her fare, I had no choice except to sign the receipt or pay the fare myself. I saw no particular objection to a receipt, excepting that it was not usual. I signed the receipt, and he paid me the $1.25. As I was returning on the evening train that day I saw Major J. D. Beardsley at the Washington depot, and I told him that Mrs. Paul Beardsley had brought a woman down, and that I had collected fare, and asked him if I had done right; to which he replied, "Yes," but then asked me why she had brought the woman. I told him I thought that
147 she had brought the woman to take care of the children, and that she would take her back on that train. Mr. J. D. Beardsley then said, "If that is the case pass the woman back and hand back the fare you have collected." I did not say anything at all to J. D. Beardsley about the receipt having been taken, or that the money had been paid after the train came by Paul Beardsley. Mrs. Paul Beardsley, her two children, and the negro woman returned to Nashville on the evening train and I passed them all free. Mr. Paul Beardsley did not go up on the train that evening, but when he did come on the train, perhaps next day, I went to him and offered him the $1.25 and told him that I was instructed to pass the negro up and refund the fare collected coming down. I requested him to return me the receipt, but he refused to do so. I told him I must have my receipt when I refunded the money. He replied that he did not want the $1.25, and that he would not take fifty dollars for the receipt. I did not make any report of the matter then to Mr. J. D. Beardsley nor until about the 20th of this month, March, when he called me into his office and said that Mr. Paul Beardsley had made the payment for the fare of the negro woman a part of his complaint in a suit and asked me to give him the circumstances of the case. I then told him for the first time about the receipt and all the circumstances connected with the matter. During my service on the road as conductor I have been on good terms both with J. D. Beardsley and Paul F. Beardsley. Both have ridden on the train with me a good deal and have constantly talked with me very freely. I have been frequently invited to both of their houses and am well acquainted with both of their families. I have never heard a word from either of them or from any member of either of their families previous to their trouble in February, 1886, which indicated any question or doubt of the fact that J. D. Beardsley was entire owner of the road, except what interest the directors might have, or which indicated or raised a presumption or suspicion that Paul F. Beardsley owned any interest in the road or was anything but an employee on a salary.

EDGAR HOLMAN.

148 STATE OF ARKANSAS, }
County of Hempstead. }

RUFUS H. BOMAR.

Rufus H. Bomar says: I live at Nashville, Arkansas, and am a citizen of Arkansas. I am forty-five years of age. I am a locomotive engineer by profession and have followed it off and on for thirteen years. I was employed by J. D. Beardsley on Arkansas and Louisiana railway about November, 1884. I was first employed in repairing cars in the yard at Nashville. After that I was put on the engine at night to do switching, get water, &c. About the 13th of April, 1885, I was put to run the passenger train. I have been away since then three months. With that exception I have run the locomotive continuously on the regular trains of the road. When I was employed on the road Mr. Paul Beardsley was employed at Nashville as assistant superintendent of the road. He seemed to be in charge of the engines, cars, yards, and property of the road about Nashville. I do not know exactly what jurisdiction he had, but I know that he was subject to the orders of John D. Beardsley, and I have known some cases in which his orders were countermanded by J. D. Beardsley. I always understood that Paul Beardsley was an employee and worked for a salary, and it was, I think, universally understood by all the employees that J. D. Beardsley owned the road. This understanding was so general that I do not think any employees had any doubt of it. I have had Mr. Paul Beardsley on the engine with me a great deal. He is not a good locomotive engineer. I think he knew just about enough about an engine to run her over the road and keep water in her, but he could not pass for an engineer on a large road. He never intimated to me that he had any property interest in the road, nor did I have any suspicion that he claimed to have any until I heard of this suit. The only wreck we have had while I have been on the road was about January 1st, 1885, and Mr. Paul Beardsley was
149 on the train that was derailed. He directed me to take him and the passengers on to Nashville on the engine, which I did. It was twelve or thirteen miles to Nashville. He then remained at Nashville and sent me back with the section foreman and some men to get the cars on. We got the train off about seven or eight in the evening, and we worked all night and got the train on the track again and running, reaching Nashville about five o'clock in the morning. On one occasion I applied to Mr. Paul Beardsley for a pass. He told me he had no authority to grant passes except on the business of the road. Mr. Paul Beardsley's duties at Nashville were not what I would consider onerous. He did not do anything more than might have been expected from any division superintendent. He has never been in control of the road since I have been at work on it, except when J. D. Beardsley has been absent.

R. H. BOMAR.

WILLIAM BOMAR, being duly sworn, deposed and said:

STATE OF ARKANSAS, *County of Hempstead:*

William Bomar says: I am a citizen of the State of Arkansas and have been so for seven years; am forty years of age. I am a locomotive engineer by profession and have been running as engineer off and on for fourteen years. I was employed to run on the Arkansas and Louisiana road by J. D. Beardsley in April, 1884. I was hired to run an engine, but was sent out with Mr. Paul Beardsley on a locomotive and fired for him for some time. I think it was to see if I was competent. I discovered that Mr. Paul Beardsley was not a competent engineer, though he knew enough about an engine to run back and forward over the road and to watch the pump and injector and keep water in the boiler. I worked continuously at that time on the road until December, 1884, and then left the road. During the most of that time I ran the construction train. Mr. Paul Beardsley was then assistant superintendent of the road. Mr. J. D. Beardsley was in control of the road, and I understood always that he was the owner of it. During this time we put down from nine to ten miles of new track. Mr. Paul Beardsley was frequently on the work, but not continuously. Sometimes he was there all day; at other times parts of days, and on some days he was not there at all. I do not remember ever seeing him handle rails or ties. I have seen him putting on fish-plates. He never pretended to work as a laborer. His duties and performance when out were about what I would expect from a general foreman of construction. He overlooked the work and gave occasional directions to the foreman or men. Mr. Teeters was foreman, and was, I believe, an old and experienced trackman. While I was on the road I always understood from Mr. Paul Beardsley that he was subject to the orders of J. D. Beardsley, and it was within my observation that his authority was very limited. J. D. Beardsley told me that he had put him in charge of engines and repairs of cars, &c., and construction. I thought I ought to get more wages than I was getting, and in the summer of 1884 I asked Mr. Paul Beardsley about it. He agreed that I ought to get more, but said he had no authority to advance my wages, but that he would ask Major Beardsley. He told me a day or two afterwards that he had spoken to Major Beardsley, and that he, Major J. D. Beardsley, had authorized an advance of ten dollars a month in my wages. I afterwards got a further advance of wages, but from my first experience I did not think it worth while to ask Mr. Paul Beardsley for it, but I went directly to J. D. Beardsley and stated my case to him, and he at once advanced my wages fifteen dollars per month more, and without my requesting it made the advance date back about two weeks.

During the year 1884 we had a good many wrecks. When a wreck occurred we all went out. Mr. Paul Beardsley always went when he was here. He worked to clear the track just as we all did. I was about with the engine when Mine creek bridge was being built. Mr. Paul Beardsley was in charge of the work. He had carpenters and other men under him. He did not work as a laborer, but over-

looked the work and gave directions to the carpenters and laborers.
I have seen him when hands were short assisting to raise a
151 bent or a heavy piece of timber occasionally. I left the road in December, 1884, and returned and went to work again in October, 1885, and remained three months. I ran passenger engine during this time.

During this time Mr. Paul Beardsley was still assistant superintendent of the road, and had his office in the depot at Nashville. He had charge of the engines and repairing of cars. I went to Paul Beardsley first and he promised me a job, but when I came to go to work he told me I would have to go and see Major Beardsley first. J. D. Beardsley was at Nashville that day. I went to see him, and he employed me at once. During the time I was on the road I never knew Mr. Paul Beardsley to be in charge of or control of the road except when left so for a time when J. D. Beardsley was absent. So far as I ever knew or heard, J. D. Beardsley was in full control of the road, and it was well understood that his orders were law, and that Mr. Paul Beardsley was as much subject to his orders as any of his other employees.

WM. BOMAR.

WM. BOMAR, being sworn, deposed & said:

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

In the Circuit Court.

PAUL F. BEARDSLEY, Complainant,
v.
JOHN D. BEARDSLEY and ARKANSAS AND LOUISIANA RAILWAY COMPANY, Defendants.

Affidavit of Wm. Bomar.

I, Wm. Bomar, do solemnly swear that I am forty years of age, and reside in the county of Howard, in the State of Arkansas. I am personally acquainted with the complainant, Paul F. Beardsley, and with the defendant, John D. Beardsley. I commenced to work for the Arkansas and Louisiana Railway Company about the month
of April, 1884, and worked for said railway continuously until
152 the month of December, 1885. I worked first as fireman and afterwards as engineer under the direction and orders of Mr. Paul F. Beardsley, who had general supervision of all work being done on said railway. At the time I commenced work he was acting as engineer, running the engine used on construction work, and I commenced work as fireman under him. On several occasions during the time that I was employed by said railway company I have known him to work all day and all night taking up wrecked cars, repairing damaged track, or putting an engine on the track, and this generally in the worst kind of weather and under the most trying circumstances to his strength and endurance. During the same period of time, or in the latter part of the year 1884, he de-

signed, superintended, and constructed, with the assistance of only the common labor attainable in that locality, what is known as Mine creek bridge. This is the most important water crossing on the road, and though the foundations in the creek proper are nine feet under water at low water they have withstood the tests of the highest freshets of two winters and are now in perfect condition. He has either repaired or superintended all repairs to both the engines and cars during the time of my employment upon the said railway. He has acted as engineer, conductor, &c., upon extra trains at all times when occasion demanded, and in fact there was no position whatever connected with the business of said railway that he could not and did not fill when it was necessary for him to do so.

WM. BOMAR.

STATE OF ARKANSAS, }
Hempstead County. }

Before the undersigned, an acting and duly commissioned notary public, personally came J. M. Simms, who, being first duly sworn, deposes as follows, to wit:

My name is J. M. Simms; I am twenty-five years of age, and live at Washington, Ark., and have done so since 1879; am a merchant and engaged in the hardware business. I was living in Washington when J. D. Beardsley built the narrow-gauge railroad between
153 Washington and Hope, in Hempstead county, Arkansas. After the road was completed I was employed by J. D. Beardsley, and began to run on the road as conductor about December, 1880. The road was all laid with iron when I went to work on it. I remained in the employment of the road until the latter part of the month of December, 1881. The depot of the narrow-gauge road at Washington was completed either just before or about the time I went to work as conductor. During this employment the addition was made to the depot at Washington, and the same was completed about the time I left the road. While I was with the road, I think about the month of November, 1881, Mr. Paul Beardsley came to Washington and went to work on the road as an employee. My understanding was that he went to work as an employee, and I have never had any reason to suppose that he then or at any subsequent time has occupied any other position to the road and its property than as an employee. I have been personally acquainted with both J. D. Beardsley and Paul Beardsley since they first came to Washington, and have, as I think, been quite intimate with both of them. I never heard the slightest intimation from either of them that Paul Beardsley owned an interest in the road, or that J. D. Beardsley did not own it entirely except the few shares of stock held by the directors. Paul Beardsley has told me more than once that J. D. Beardsley owned the road. The last time he told me this was within six months past. I asked him to give me an annual pass over the road, and he replied that he had no authority to give an annual pass; that Major owned the road, or that the road belonged to Major, or words to that effect, and that I would have to go to him

for it. I was also in the employ of the road again in March and April, 1883. During the time that I was in the employment of the road Mr. Paul Beardsley never was in control of the operation of it unless when left so temporarily by J. D. Beardsley in his absence.

J. M. SIMMS.

Subscribed and sworn to before me, John H. Arnold, an acting and duly commissioned notary public in and for the county of Hempstead and State of Arkansas, this the 24th day of March, A. D. 1886.

[SEAL.] JOHN H. ARNOLD,
Notary Public.

154 STATE OF ARKANSAS, }
County of Clark. }

Before the undersigned, an acting and duly commissioned justice of the peace within and for the county and State aforesaid, personally came and appeared John H. Burt, who, being first duly sworn, deposes as follows, to wit:

My name is John H. Burt; I am thirty-six years old, and now reside at Whelen Springs, Arkansas, and am in the employ of the Whelen Lumber Company in the capacity of book-keeper. I formerly lived in Washington, Hempstead county, Arkansas, and was employed by J. D. Beardsley as depot agent of the Washington and Hope Railway Company and the Arkansas and Louisiana Railway Company at that point from early in the year 1880 until the month of November, 1884. From the beginning of my employment as agent until January, 1884, I kept such books of the company as were kept at the depot, and all the cash which was collected at the depot passed through my hands and was entered upon my cash book. When I first went to work for the road there was only one depot, and all the business of the road went through that depot, which was at Washington and in my charge. The regular books of the company were kept by W. H. Carruth, treasurer, and all of my settlements were made with him until January, 1884, when Mr. Wheeless was employed as auditor of the Arkansas and Louisiana road, and opened a new set of books for J. D. Beardsley, general manager and lessee of the road. During the whole of my connection with said roads I always understood that J. D. Beardsley was the absolute owner of the roads, and I knew his word was law in regard to everything connected therewith. I never heard this questioned either by Mr. Paul F. Beardsley or any one else, nor from what I saw and knew about the affairs of the road was there anything, as I now remember, calculated to make a different impression upon me. Mr. Paul F. Beardsley came to Washington in the latter part of the year 1881, and immediately went to work on the railroad, as I understood, as an employee, and if he ever was connected with the road at
155 any time otherwise than as an employee I did not know it nor had I any reason to suspect it. There was never any change, so far as I know, in the character of his work or in the way in which he acted and was treated from the beginning of his connection with

the road until I left it, except in the matter of drawing money from me at the depot.

From the time he first went to work until the latter part of the year 1883 Mr. Paul Beardsley was in the habit of drawing money as he wanted it from me at the depot, and it was always charged to him on my books. Some time in the latter part of the year 1883 his account was moved to Mr. Carruth's, and he afterwards drew his money from there. J. D. Beardsley checked up my cash book with me every month, and I have frequently heard him say that Paul Beardsley had overdrawn his salary, though I don't think I ever heard or knew what salary he was getting. He did all kinds of work on the road, just as every other man did, regardless of any particular employment. While I was technically called the "depot agent" I was at the same time man of all work and did any and every thing that I could to further the interests of the road. We all did whatever we were directed to do by J. D. Beardsley and in his absence, of course, worked for the best interests of the road. I have acted as conductor, brakeman, switchman, freight-handler, book keeper, and almost everything else under my employment as "depot agent." In checking up my cash J. D. Beardsley would always set down the different amounts drawn by Paul Beardsley during the month on a piece of paper and keep it separate, so as to ascertain the aggregate amount drawn by him during each month. Money was then very scarce with the road, and every cent that came in and went out was looked after very closely by Major Beardsley.

JOHN H. BURT.

STATE OF ARKANSAS, }
County of Clark. }

John H. Burt, being duly sworn, says the facts stated in the above and foregoing affidavit are true, to the best of his knowledge and belief.

Sworn to & subscribed before me this 24th day of March, A. D. 1886.

E. A. JENKENS, *J. P.*

156 HENRY B. HOLMAN, being duly sworn, deposes and says:

STATE OF ARKANSAS, }
County of Hempstead. }

Henry B. Holman says: I am a citizen of the State of Arkansas, and am forty-three years of age, and reside in Hempstead county, of said State. For the past six months I have been residing on my plantation, near Columbus, in said county, but for some years previous to my removal to my plantation I resided continuously in the town of Washington, in said county, and carried on business there as a general merchant, and I had so resided and carried on business in said town for some time previous to Major John D. Beardsley's first arrival in the town, in July, 1879. I was a director and a stockholder of the Washington and Hope Railway Company and

of the Arkansas and Indian Territory Railway Company, and I am a director and stockholder of the Arkansas and Louisiana Railway Company. I have been a member of the board of directors and a stockholder of all three of these companies during the whole time of their corporate existence and still am a director and stockholder of the Arkansas and Louisiana Railway Company, and I was president of the Arkansas and Indian Territory Railway Company. I generally attended the meetings of the directors and stockholders of the Washington and Hope Railway Company, and was thoroughly acquainted with the business transactions of that company up to and including its sale to the Arkansas and Indian Territory Railway Company. I am personally acquainted with Mr. Paul Beardsley. He was in the employment of the Washington and Hope Railway Company from about the first day of November, 1881, up to the time its road and franchises were sold to the Arkansas and Indian Territory Railway Company. He never had any stock in the Washington and Hope Railway Company that I know of, and was never recognized by any of the directors of that company as having any interest in it whatever.

After the organization of the Arkansas and Indian Territory Railway Company I was elected its president. The five per
157 cent. cash payment on which the affidavit to the secretary of state was based was paid in entirely by J. D. Beardsley on his own account, and no part of it was on account of stock subscribed by any other party. J. D. Beardsley furnished a considerable amount of money and did a good deal of construction for the Arkansas and Indian Territory Railway Company, for which that company never paid him anything except one installment of bonds, but in the sale of the Arkansas and Indian Territory railway to the Arkansas and Louisiana Railway Company the latter company issued their indebtedness. I was also a party to the organization of the Arkansas and Louisiana Railway Company. I was elected a director of that company at first, and have been re-elected continuously ever since. I was present at the permanent organization and election of directors on — day of ——, A. D. 188–. On that occasion J. D. Beardsley declined to be elected as a director. He gave his reasons to all present. They were that he contemplated to make a contract with the company for the construction of the road, and that the law prohibited him from being interested in any such contract if he should be a director of the road. Mr. Paul Beardsley was present at this meeting when the statement was made. He had before been elected a provisional director and was that day re-elected after J. D. Beardsley had declined election. Paul Beardsley has been a director continuously from that time up to the present. The money payment upon which the affidavit of the directors of the Arkansas and Louisiana Railway Company was made to the secretary of state was based, setting forth that an amount equal to five per cent. of the subscribed stock was paid in, was entirely paid in by J. D. Beardsley on his own account, and no part of it was credited on the stock subscription of any other party. I was present as a director of the Arkansas and Louisiana Railway Company when the con-

struction contract with J. D. Beardsley was submitted and ratified. It was unanimously ratified, and was, in my opinion, the best contract that could have been made and the only way by which
158 the company could have had the road extended, and, furthermore, it enabled the company to pay with stock and bonds a large debt assumed in the purchase of the Arkansas and Indian Territory Railway Company, which might have been pressed for a cash payment. Mr. Paul Beardsley was present at this meeting as a director and voted for the ratification of this contract. This meeting was held on the 22nd day of May, A. D. 1883. I had no suspicion then, nor do I now believe, that Mr. Paul Beardsley had any interest whatever in this contract. All the directors were personal friends of Mr. Paul Beardsley as well as of J. D. Beardsley.

There were eight or ten directors, which is a greater number than is required by law. From the manner in which the matter had been brought up at the previous election it was perfectly understood that no directors could be legally interested in this contract. There was no necessity for Mr. Paul Beardsley to have covered up or concealed his interest in this contract, if he had any, as the directory would, I think, have been just as willing to contract with Paul F. and J. D. Beardsley as with J. D. Beardsley alone. My understanding was that we were contracting with J. D. Beardsley for himself and in his own exclusive interest. I have been personally very intimate with both Mr. Paul Beardsley and Mr. John D. Beardsley since and ever since their first coming to Washington, Arkansas. I have never heard anything from either of them that led me to suspect in the least that J. D. Beardsley did not own the road absolutely, excepting the stock held by the directors, or that Paul Beardsley had any property interested whatever in it. I am aware that Mr. Paul Beardsley subscribed for some stock both in the Arkansas and Indian Territory and in the Arkansas and Louisiana Railway Companies, but to the best of my knowledge and belief he never paid anything on account of his subscriptions, and none of the stock which he subscribed for was ever issued to him.

H. B. HOLMAN.

159 JESSE CARROWAY, being duly sworn, deposes and says:

STATE OF ARKANSAS, }
County of Hempstead. }

Jesse Carroway says: I reside at Nashville, Arkansas; am thirty-five years of age. I am in the employment of the Arkansas and Louisiana railway as section foreman. I was employed by J. D. Beardsley about January 16th, 1883, and have worked for the road continuously ever since. I was part of the time fireman and part of the time night watchman. I have followed railroading for seven years. When I came upon this road Mr. Paul Beardsley was here as assistant superintendent and remained so while I was here for over three years, or until about the middle of last month. I have very frequently worked under his orders, both on track-laying and

on bridge-work. I worked on the track-laying from above Ozan to Short's mill, or the place where Short's mill is now situated, about seven miles. I was on this work continuously. Mr. Teeters was in charge of the track-laying. Mr. Paul Beardsley was out on the road a good deal, but not continuously. Some days he came and some days he did not. He would sometimes come and stop some hours or a shorter time and then go back. He would sometimes come out on the construction train and go back on the passenger train, which sometimes ran to the end of track. At other times he would go on construction train. Sometimes he would stop all day on the work. He was recognized as an officer of the road and his authority as such was not questioned, unless his orders were countermanded by J. D. Beardsley, which I have known to happen more than once. When Mr. Paul Beardsley was out on construction work I never saw him working with his hands as a laborer. He stood around the work, overlooked it, and sometimes gave orders to the men as foreman. I never saw him handling rails nor assisting to handle them. I have seen him pick up fish-plates and hand them to the men who were bolting them to the rails, and I have seen him occasionally put in the bolts. I think I once saw him help handling
160 a few ties for a few minutes when we were short of men. His duties seemed to me to be about what any division superintendent would have to perform. I always observed that his authority was limited and in any important matter he referred to John D. Beardsley. He told me that J. D. Beardsley did not permit him to grant passes except for the business of the road. I never had any suspicion that Paul Beardsley was anything more than an employee like myself.

All my observations during the three years and more that I worked on the road went to confirm my original understanding had when I went there, namely, that J. D. Beardsley owned the road, and that Mr. Paul Beardsley was an employee on a salary. I have been at work putting in bridges when Mr. Paul Beardsley had charge of the work. He gave orders and was back and forward, sometimes staying all day. I never saw him doing any continuous laborious work or carrying heavy timbers. I think I have occasionally seen him help the men handle pieces of timber when the men were short-handed at that spot, but it was not usual. During the time that I have been in the employ of the road I have never known Mr. Paul Beardsley to be in control of the construction or operation excepting at short intervals when J. D. Beardsley was absent. When wrecks occurred on the road I often went out with Mr. Paul Beardsley to assist in clearing them up. In such cases we all worked until the wreck was cleared off and the road in condition for running again.

JESSE CARROWAY.

Witness:
C. BOURNS.

(Endorsed:) Filed June 30th, 1886. Ralph L. Goodrich, clerk.

W. P. HART, being duly sworn, deposes and says:

I am fifty-five years of age, and reside in Washington, in Hempstead county and State of Arkansas, and by profession am a physician. I am acquainted with the plaintiff, Paul F. Beardsley. I have been a director in the Arkansas and Louisiana Railway Company from its organization to the present time. I was di-
161 rector in the Arkansas and Indian Territory Railway Company from its organization until it was sold to and merged into the Arkansas and Louisiana Railway Company. I was a director in the Washington and Hope Railway Company from its organization until it was sold to and merged into the Arkansas and Indian Territory Railway Company. So far as I can remember I was present at all the meetings of the board of directors of the Arkansas and Louisiana Railway Company from its organization up to the present time, as also all meetings of the board of directors of the Arkansas and Indian Territory Railway Company and of the Washington and Hope Railway Company. I have not nor do I claim any interest whatever in the stock or any of the property of the Arkansas and Louisiana Railway Company, nor do I believe that the president or any of the directors of said company claim, own, or control any of its stock or property. In the latter part of 1883 or early part of 1884, as near as I can remember, I was requested to indorse and surrender what stock I held as a director in said Arkansas and Louisiana Railway Company, and, having no pecuniary interest in said stock, I did so indorse and surrender the same according to said request. I was informed and believe that a like request was made of all other directors in said company to indorse and surrender their stock, and that in compliance with said request they did in like manner so indorse and surrender the same. It has been my belief and understanding that the said Paul F. Beardsley owned an interest in the stock and property of the said Arkansas and Louisiana Railway Company, and at no time previous to the month of February, 1886, have I heard that the said John D. Beardsley or any other person did dispute or deny his said ownership. I am unable to state how or why I formed this belief except that it be from my observation of the great interest which he took in all the business and operations of said railway and from the manner in which the said John D. Beardsley consulted with him in all matters pertaining to the affairs and interests of said railway and from the absolute power and authority which he, the said Paul F. Beardsley, seemed to exercise over the property, trains, and employees of said rail-
162 way company. In fact all the power and authority which was usually exercised by the said John D. Beardsley seemed to be delegated to and exercised in the same manner by the said Paul F. Beardsley, and, further, from the fact, as I am informed and believe, that the records of the board of directors setting forth the transactions of the Arkansas and Louisiana Railway Company and of the Arkansas and Indian Territory Railway Company at the time of their organization did set forth and state the respective interests of the said Paul F. Beardsley and the said John D. Beardsley as they then existed.

So far as I know or can remember, the said Paul F. Beardsley never attended but one meeting of the board of directors of the said Arkansas and Louisiana Railway Company. It is my information and belief that the services performed by the said Paul F. Beardsley on and for the said Arkansas and Louisiana railway were of a most arduous and valuable nature and were not such services as could have been obtained or expected from an employee for wages only. In fact, it was notoriously known and understood that the said Paul F. Beardsley did work and act in all positions and at all times of day or night as the circumstances of the case or the necessities of the business of said railway or its interests required.

To so much of the foregoing deposition as is stated from information or belief and as a matter of opinion *are* accepted to by the defense.

I have had frequent conversation with John D. Beardsley about the road and the affairs of it, but have never had any with Paul Beardsley.

Cross-examination:

Paul Beardsley at all times seemed to exercise absolute power and authority over the property, trains, and employees of said railway company, both in the presence of J. D. Beardsley and out of it, but in this I do not mean to say he exercised it in exclusion of the power and authority of John D. Beardsley. In the management and control of the road John D. Beardsley consulted with and conferred with Paul F. Beardsley, and in
163 the absence of Major Beardsley the power and authority was exercised by Paul F. Beardsley. Major Beardsley was the superintendent of the road and consulted with Paul Beardsley about the management of it, and that Paul Beardsley exercised absolute authority when Mr. John D. Beardsley was absent. This was my observation of the management of this railroad. The facts above stated were drawn from my connection with the road in a business capacity and as a passenger and as a spectator. My business relations consisted in shipping goods over the road and as a spectator and visitor at the depot at Washington. I think I attended all of the meetings of the directory except one and possibly that one; that at the meetings of the directory the business that was transacted was done at Major Beardsley's suggestion and dictation. As to the details of the business I would say I do not remember much about it. I have never read the record of the proceedings of the directory of the railroad. I recollect from what transpired in the meetings. I think that I got my impression about the respective interests of these parties at the time of the transactions and sales and purchases of the different roads, and that the impression has been strengthened and confirmed by the books of the company, — as I am informed and believe, show these facts to be true. I got this information as to the books since the commencement of this suit, and it is only hearsay, as I have not examined the books. The first positive and conclusive information I had that Paul Beardsley had an interest in the rail-

road was after the commencement of this suit. I have, until after the commencement of this suit, recognized Major John D. Beardsley since his connection with the road, subject to certain conditions entered into with the citizens of Washington, Arkansas, for the completion of the same, as the sole owner thereof, and this impression was the result of the fact that the dealings were between Major Beardsley and the directory, and that his was the only name known in the transaction.

W. P. HART.

(Endorsed:). Filed July 3rd, 1886. Ralph L. Goodrich, clerk.

164 J. G. W. YOWELL, being duly sworn, deposes and says:

I am forty-one years of age; resident of Howard county, Arkansas, and am a merchant by occupation. I have resided here about eighteen years, and am personally acquainted with the complainant, Paul F. Beardsley, and the defendant, John D. Beardsley. Some time during the year 1883 or 1884, in my office in Nashville, I think, I had a conversation with Major John D. Beardsley, in which he stated (we were talking about the railroad) that his brother, Paul F. Beardsley, had at one time, in California, been worth considerable money, but had met with severe losses, and that he, John D. Beardsley, had given him or sold him, I do not remember which, a one-third interest in the railroad then being constructed to Nashville, Arkansas; that at the time of said gift or purchase he felt that he was not doing a great deal for his brother, but that the way matters had turned out it was a big thing for Paul, and the best thing he could have probably done for himself, as Paul had been of great advantage to him, and he did not see how he could have got along well without him. I have known Paul F. Beardsley for two or three years, possibly longer. I know that he worked on the road, both in the construction and running it afterwards. I know that he did almost all kinds of work on the road. I know Mrs. A. M. Rector; she is my mother-in-law. Some time prior to September, 1883, as other citizens of Nashville and I understood, the Arkansas and Louisiana Railway Company contemplated extending the line of road and establishing a depot about a mile and a half from this place, on lands that had been purchased or negotiated for for that purpose. In order to procure the running of the road to Nashville and the establishment of a depot here, we entered into a contract, a copy of which is filed herewith and marked Exhibit A and made a part of this deposition. The lands that the railroad company wanted, and which we agreed to have conveyed, belonged to Mrs. A. M. Rector and N. C. Sypert. At the commencement and during the pendency, and, in fact, until after the consummation of the said negotiations, Mrs. Rector was out of the State, and her son, Mr. Geo. L. Rector, and
165 I acted as her agents. The citizens of Nashville and the surrounding country, principally the citizens of Nashville, paid to Mrs. Rector and N. C. Cypert the purchase-money for the lands at Nashville and described in Exhibit A. No one except the citizens of Nashville and the surrounding country paid for said lands.

I was one of the subscribers—Mr. Geo. L. Rector, N. C. Cypert, W. A. Morehead, and others. The contract and deeds are written out in the name of John D. Beardsley, but it was the intention of the parties, as I understood, and the agreement, as I understood it, that it was conveyed for the benefit of the Arkansas and Louisiana Railway Company. I know that was my intention and my understanding.

Question. Would you, as one of the subscribers, have paid any money as a donation to John D. Beardsley in his own right or for any other purpose than to procure the running of the road and the location of the depot at Nashville?

Answer. I would not. From my communication and correspondence with Mrs. A. M. Rector I think her intentions were the same as mine. Mrs. A. M. Rector made a deed conveying the land described in Exhibit A. I think Mrs. A. M. Rector knew very little about the true inwardness of the transaction. She was away from home, as before stated, and I telegraphed her from Texarkana that the railroad company wanted the Rector place and I could get three thousand dollars for it in cash, and she answered back she would take it, reserving, I think, four or five acres of the land. The original of Exhibit A hereto is in the handwriting of John D. Beardsley. I do not know who drew the deeds, but we forwarded the papers to Mr. A. M. Rector for her signature as presented to us. As well as I can remember, the deeds were drawn in the name of J. D. Beardsley as at suggestion to do, but my mind is not clear upon that point.

Cross-examined:

166 I remember having heard Major J. D. Beardsley say that he had sold or given Paul F. Beardsley an interest in the road on two occasions; one of them was at the time the road was at Ozan station. We were coming in a hack from Ozan to Nashville. The other time was in my store at Nashville. I cannot remember the exact time. I understood that it was a third of the Arkansas and Louisiana railway. We were speaking of that road at the time, and that was my understanding. I remember Paul F. Beardsley running an engine on the road; I also remember seeing him overhauling an engine with Mr. Isom, a machinist by trade. I have frequently seen Mr. Paul F. Beardsley in the office, where he appeared to be attending to railroad business. I cannot specify at this time any other special kind of work I have seen him doing. My impression is I have seen him doing most all kinds of work. I have seen him on the construction train; I have seen him on the road with the hands. In the matter of the negotiation of the purchase of the lands from Mrs. A. M. Rector, I, with other persons interested, conducted the negotiation for the purchase of the same and the extension of the railroad with Major J. D. Beardsley, who I understood was acting for the Arkansas and Louisiana Railway Company. I attach hereto as part of my deposition a copy of a subscription list signed by myself and other persons. The heading of the original is in the handwriting of Major John D. Beardsley. All the negotiations for the extension of the railroad to Nashville—so far as I am

individually concerned, I never had any interest or negotiation with the president or any officer of the company, but my transaction was with Mr. J. D. Beardsley. We supposed that he was representing the company and anything he did would be perfectly satisfactory, from the fact we all considered he controlled the whole business

Redirect examination:

When I said that I thought Major J. D. Beardsley controlled the whole business I did not mean to convey the idea that I thought he owned the whole business. As tending to show the intention of the parties who subscribed amounts to purchase the Rector and
167 Sypert lands, I also attach a copy of another subscription list and make it a part of my deposition and mark it Exhibit C.

And further the deponent saith not.

J. G. W. YOWELL.

GEORGE L. RECTOR, being duly sworn, deposed and said:

I am thirty-four years of age; my occupation is that of a merchant; my residence is Howard county, Arkansas. I am acquainted with the plaintiff, Paul F. Beardsley, and John D. Beardsley, the defendant. I have known Paul F. Beardsley ever since he came to this State, some time during the year 1883, in the summer or fall. I was present at a conversation between J. G. W. Yowell and J. D. Beardsley, and heard J. D. Beardsley say to J. G. W. Yowell that he had given or sold or let P. F. Beardsley have one-third interest in the road. They were talking about the Arkansas and Louisiana railway, and he went on to state that it was a good thing for him he had gotten Paul F. Beardsley, and that at the same time he was doing a good thing for Paul F. Beardsley, as he had met with reverses, and said he did not see how he could have gotten along without his services, and that they were a mutual benefit to each other, and he said that he could not have had so much interest taken in the work from or by any one else. I am the son of Mrs. A. M. Rector. The land that Mrs. A. M. Rector deeded to John D. Beardsley was paid for by the citizens of Nashville and was given or intended to have been given to the Arkansas and Louisiana Railway Company for the purpose of inducing them to bring the road to our town. My mother, at the time of the negotiation of the land, was away from home and the negotiations were with J. G. W. Yowell and myself, acting as her agents. I, as one of the subscribers, intended to donate my portion to the railroad. The contract and deeds are made in the name of J. D. Beardsley. Major Beardsley drew the original contract, and the deeds were made in conformity to it at his suggestion.
168 We supposed that he owned the road, or the most of it, or at least a controlling interest in it, and thought that he was taking the deeds for the benefit of the railroad company. I would not have made the donation to J. D. Beardsley for his own benefit. The lands deeded by W. C. Sypert to John D. Beardsley are also donated by the citizens of Nashville for the same purpose and with the same understanding. A description of the same is set out in a

copy of his deed, attached hereto and marked Exhibit "A" and made a part of this deposition.

I remember on another occasion, I think in 1882, when Major J. D. Beardsley and myself were coming from Hope to Washington. I was myself here to extend the road to Nashville, and he said at that time he did not have any money, and that he could not perfect negotiations at that time with monied men. I asked him at that time if Mr. Paul Beardsley had an interest in the road, and he said that he had given Paul F. Beardsley an interest. I went over the road frequently and I know that Paul F. Beardsley did various kinds of work on the road. He superintended track-laying, putting in of ties.. I have seen him running the engine. I have seen him about the office, working in the shop, and in fact I have seen him doing most all kinds of work on the road.

Cross-examination:

It was some time in the year 1883 that I was present at the conversation between J. G. W. Yowell and J. D. Beardsley, as stated in my examination-in-chief, and after the plan had been laid off of the town of Nashville; of this I am not certain—as to time, I mean.

The second conversation referred to with Major Beardsley in my examination-in-chief took place on a train going from Hope to Washington, and before the road had been extended beyond Washington.

Further the deponent saith not.

GEO. L. RECTOR.

169 JOHN H. BELL, being duly sworn, deposed and said:

I am forty-three years of age; reside near Nashville, Howard county, Arkansas; occupation, county and probate judge of Howard county. I am acquainted with Paul F. Beardsley and John D. Beardsley. I have known them both for several years. They have been engaged for some years past in making the Arkansas and Louisiana railway. I know that Paul F. Beardsley had the management of the construction of the road and that he did various kinds of work after its construction. I do not know whether Paul F. Beardsley had any interest in the road or not, but about three years ago Major John D. Beardsley, in a conversation with me, said that Paul F. Beardsley had an interest, but the extent of it he did not tell me. As well as I can remember the date, about September, 1882. I was employed by Major J. D. Beardsley to purchase lands about a mile and a half from Nashville for the purpose of running the railroad to, establishing a depot, and locating a town. The money that I paid for those lands I obtained from Mr. Carruth, of Washington, who is the treasurer of the railroad company.

The total amount of money thus received by me was twelve hundred and twenty-five dollars. The bonds for title first, and then the deeds, when the money was paid, were taken in my name. There was also a deed made by W. H. Carruth, as president of the Washington and Hope Railway Company, attested by R. B. Williams, as

secretary, to a tract of land adjacent or near to the lands I bought. The object in making of the deed from Mr. Carruth, president of the Washington and Hope Railway Company, was that I might show to parties owning land near it that I was buying land in that vicinity. The understanding was that after I had obtained the deeds the lands were to be conveyed to J. D. Beardsley. Major J. D. Beardsley was managing the road. I did not know whether he was purchasing for himself or the railroad company, but from his statement, as I before stated, it was bought for the purpose of running a railroad there, establishing a depot there, and building a town.

The reason it was desired that I should buy the lands in that
170 way was because if the parties found out that the railroad was coming there they would probably ask more for their property. A copy of the deed from Mr. Carruth as president to me, herein mentioned, is herewith filed, marked Exhibit A, and made a part of this deposition.

Cross-examination:

In conversation I had with J. D. Beardsley I cannot remember what brought about his reference to the interest of Paul F. Beardsley in the railroad. I merely remember that he said that Paul F. Beardsley had an interest, but what interest he did not state.

Further deponent saith not.

JOHN H. BELL.

EXHIBIT "A" TO J. G. W. YOWELL'S DEPOSITION.

Whereas the citizens of Nashville and the surrounding — are desirous to have the Arkansas and Louisiana railway extend on or near the line recently located by C. S. Martin, civil engineer, to some point west of Mine creek, and they have agreed with J. D. Beardsley, of Washington, Arkansas, that if he will cause the said road to be extended as aforesaid to some point west of Mine creek they will purchase and give to him a good and unincumbered title to the following lands, situated near Nashville, in Howard county, to wit: The N. W. of the N. W. and the N. E. of the N. W., the S. E. of the N. W., the N. W. of N. E., the N. E. of N. E., the S. W of N. E., the S. E. of the N. E., all in section 26, township 9, range 27 west, all of which is known as the Rector place, and containing, exclusive — lots sold out of the N. E. of N. W. and N. ½ N. E., two hundred and thirty-seven acres, more or less; and also the following lands: The N. ½ of the S. E. of section 26, township 9 south, range 27 west, belonging to N. C. Cypert, and containing seventy-six acres, exclusive of four acres sold therefrom out of N. E. of S. E., and to enable the company to go on at once with construction of their said road pending the purchase and making deeds of the said lands, we, the undersigned, jointly and severally, guarantee the full and complete fulfillment of the said agreement on the part of the citizens of
171 Nashville and the other parties included with them. It is understood and agreed, as a part of the consideration for this

land, that J. D. Beardsley shall cause to be located on the land herein referred to a depot and shall lay out a town thereon, and failure on his part so to do cause the forfeit of this understanding.

Witness our hands this 30th day of April, 1883.

J. D. BEARDSLEY.
N. C. SYPERT.
D. D. WOMACK.
GEO. L. RECTOR.
F. P. HOLT.
ISAAC M. PUCKETT.
J. G. W. YOWELL.
S. B. REESE.
D. M. BRYANT.
T. PARRISH.

The considerations of this bond have been in all things fulfilled, and the same is hereby cancelled and surrendered to the original makers this 18th day of May, A. D. 1885.

J. D. BEARDSLEY,
By R. B. WILLIAMS, *Attorney.*

(Endorsed:) Filed Jun- 4th, 1886. Ralph L. Goodrich, clerk.

EXHIBIT "B" TO J. G. W. YOWELL'S DEPOSITION.

Messrs. Sypert, Yowell, and Pucket.

GENTLEMEN: Learning that you are negotiating with the Arkansas and Louisiana railway to induce them to extend their line across Mine creek and locate present terminal point in Howard county near Nashville, and desiring to assist you, we subscribe and promise to pay for that purpose the amounts opposite our respective
172 names. In any negotiations you may make you can count upon the amounts herein subscribed being paid on call to you or your order, each individual being responsible for his own subscription and no more.

W. C. Sypert	$500	A. H. Little	85
F. T. Shepherd	150	D. B. Sain	20
J. G. W. Yowell	100	John B. Ramage	15
F. P. Holt	150	C. N. Baldidge	10
D. M. Bryant	200	S. P. Holmes	5
D. D. Womack	300	F. W. Lee	25 00
S. B. Reese	200	J. H. Robinson	20 00
J. M. Gibson	20	G. M. Clark	200
W. A. Morehead	25	R. H. Parker	50
D. A. Hutchinson	25	F. M. Buxton	15
T. J. McClenden	25		

(Endorsed:) Filed Jun- 4th, 1886. Ralph L. Goodrich, clerk.

Exhibit "C" to J. G. W. Yowell's Deposition.

Subscription List.

At a citizens' meeting at Nashville, Howard county, Arkansas, on Thursday, 22nd day of August, 1883, the following committee—W. C. Sypert, O. P. Anderson, F. P. Holt, J. M. Pucket, and James T. Lane—was appointed to solicit subscriptions to raise thirty-seven hundred and fifty dollars ($3,750) to induce the A. & L. Railway Company to cross Mine creek and locate their terminal point in Howard county near Nashville. To assist in raising said amount each subscriber obligates himself to pay the sum opposite his name, and authorizes the committee to call upon him when the money is needed, and desired said committee to make such disposition of the money raised as will best promote the interest of Howard county.

173	W. C. Sypert	$500	W. W. Hill	10	
	F. T. Shepherd	150	O. T. Pope	10	
J. G. W. Yowell		100	W. H. Briggs	10	
F. P. Holt		150	T. J. McLendon	25	
D. M. Bryan		200	A. H. Little	5	
D. D. Womack		300	D. B. Sain	20	
S. B. Reese		200	John B. Ramage	15	
H. M. Gibson		20	C. N. Baldindge	10	
W. A. Morehead		25	S. P. Holmes	5	
D. A. Hutchinson		25	J. B. Cobeland	5	
George Turner		15	J. L. Tullis	5	
Milton Hill		10	J. V. Carman	5	
Thomas Hill		5	Fed. Edwards	10	
Henry Gamble		5	D. D. Reeder	10	
O. P. Anderson		50	Whittle Coalett	5	
J. R. Jones		8	W. Y. Foster	25	
Ca. W. Jones		2 50	W. J. Perkins	10	
W. H. Watson		5	Ives Wiley	2	50
Daniel Cheshire		2	Joe. H. Watson	2	50
B. H. McClenahand		1	W. P. Sullivan	2	50
J. M. Prichett		50	J. P. Jackson	5	00
E. R. Sain		10	J. T. Lane	10	
J. F. Merrill		5	R. C. Mitchell	5	
M. C. McCrary		5	Harrison Bradford	5	
John Jones		10	Henry Jones	2	50
L. H. Alexander		5	W. W. Mayfield	2	50
R. J. Sanders		25	Wm. Campbell	5	00
G. M. Clark		200	James Hutchinson	10	
T. W. Lee		25	O. L. Anderson	5	
J. H. Robinson		20	H. M. Maulden	2	50
K. H. Parker		50	Ed. Clingen	2	50
Fed. Buxton		15	G. W. Sullivan	2	50

174 (Endorsed:) Filed June 4th, 1886. Ralph L. Goodrich, clerk.

EXHIBIT "A" TO GEO. L. RECTOR'S DEPOSITION.

Warranty Deed with Relinquishment of Dower.

Know all men by these presents that we, W. C. Sypert and K. K. Sypert, his wife, for and in consideration of the sum of one thousand dollars, to us in hand paid by J. D. Beardsley, of Washington, Arkansas, at or before the sealing or delivery of these presents, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said J. D. Beardsley and unto his heirs and assigns forever the following lands, lying in the county of Howard and State of Arkansas, to wit: The north half of the southeast quarter of section twenty-six (26), township nine (9) south, range twenty-seven (27) west, containing eighty (80) acres, excepting two (2) adjoining blocks of two (2) acres each, heretofore sold to D. W. Lee and D. B. Sain, described and numbered as shown on their deeds, and also excepting the lot now occupied by W. C. Sypert's store and the printing office, twenty-five by one hundred and forty-two feet, and a piece of land in southeast quarter of land hereby conveyed, bounded as follows: Starting at the southeast corner of the land hereby conveyed and running north along the line between sections twenty-five (25) and twenty-six (26) two hundred and fifteen (215) feet, thence on a line due west at right angles four hundred and thirty (430) feet; thence due south at right angles two hundred (200) feet to south line of land hereby conveyed; thence at right angles along said line to point of commencement, all containing about two acres; to have and to hold unto the said J. D. Beardsley and unto his heirs and assigns forever, with all appurtenances thereto belonging; and we hereby covenant with the said J. D. Beardsley, his heirs and assigns, that we will forever warrant and defend the title to said lands against all lawful claims whatever.

And I, K. K. Sypert, wife of the said W. C. Sypert, for and in consideration of the said sum of money, do hereby release and relinquish unto the said J. D. Beardsley, his heirs and assigns, all
175 my right of dower in and to the said lands.

Witness our hands and seals this 12th day of January, 1884.

W. C. SYPERT. [L. S.]
K. K. SYPERT. [L. S.]

Acknowledgment.

STATE OF ARKANSAS, } ss:
County of Howard, }

Be it remembered that on this day came before the undersigned, a justice of the peace within and for the county aforesaid, duly commissioned and acting, W. C. Sypert, to me well known as the grantor in the foregoing deed, and acknowledged that he had executed the same for the consideration and purposes therein mentioned and set forth; and on the same day also voluntarily appeared before me

the said K. K. Sypert, wife of the said W. C. Sypert, to me well known, and in the absence of her husband declared that she had of her own free will signed and sealed the relinquishment of dower in the foregoing deed, for the consideration and purposes therein mentioned and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal as such justice of the peace this 12th day of January, 1884.

D. B. SAIN, *J. P.*

Filed for record August 2nd, 1884, at eight o'clock p. m.
J. M. SOMERWELL, *Clerk*,
By J. W. BISHOP, *D. C.*

Certificate of Record.

STATE OF ARKANSAS, } ss:
County of Howard, }

I, J. M. Somerwell, clerk of the circuit court and *ex officio* recorder for the county aforesaid, do hereby certify that the within and foregoing instrument of writing was filed for record in my office on the 7th day of August, 1884, at eight o'clock p. m., and the same is now duly recorded, with the acknowledgment and certificate thereon, in Record Book "J," pages 232, 233.

176 Seal of court. In testimony whereof I have hereunto set my hand and affixed the seal of said court this —— day of ——, 1884.

H. M. SOMERWELL, *Clerk.*

A true copy of original deed as the same appears of record in my office.

Witness my hand and seal the 8th day of April, 1886.

J. M. SOMERWELL,
Clerk and Recorder.

Endorsed: Filed June 8th, 1886. Ralph L. Goodrich, clerk.

Copy.

EXHIBIT "A" TO DEPOSITION OF JOHN H. BELL.

In consideration of the sum of eighty dollars, in hand paid to the Washington and Hope Railway Company by John H. Bell, the receipt whereof is hereby acknowledged, the said Washington and Hope Railway Company by these presents doth grant, bargain, and sell and convey unto the said John H. Bell the following-described tract of land, lying in the county of Hempstead and State of Arkansas, to wit: The northeast quarter of the northeast quarter of section twenty-nine (29), in township nine (9) south, in range twenty-seven west, containing forty acres, more or less, with all the rights, privileges, and appurtenances thereunto belonging; to have and to hold the same unto the said John H. Bell, his heirs and assigns forever, against the lawful claims and demands of all persons.

In testimony whereof the said Washington and Hope Railway Company hath caused these presents to be signed by its president and countersigned by the secretary and the seal of the company affixed hereto this 14th day of September, A. D. 1882.

[SEAL.] W. H. CARRUTH, *President.*

Countersigned by—
R. B. WILLIAMS, *Secretary.*

177 STATE OF ARKANSAS, }
Hempstead County. }

Before the undersigned, a notary public in and for the county and State aforesaid, personally came William H. Carruth, to me well known as the person who had signed the foregoing deed, and also to me well known as the president of the Washington and Hope Railway Company, who stated and acknowledged that he had signed and executed the foregoing deed for the use, purposes, and consideration therein set forth.

And on the same day came Robert B. Williams, to me personally known as one of the persons who had signed the foregoing deed, and also to me well known as the secretary of the Washington and Hope Railway Company, who stated and acknowledged that he had signed and executed the foregoing deed for the uses, purposes, and considerations therein mentioned and set forth; all which is certified.

Witness my hand and official seal this 14th day of September, A. D. 1882.

[SEAL.] JOHN E. WILLIAMS,
Notary Public.

(Endorsed:) Filed Jun- 4th, 1886. Ralph L. Goodrich, clerk.

We hereby agree that the above and foregoing depositions of witnesses may be read in evidence on the trial of the cause of Paul F. Beardsley *v.* John D. Beardsley and The Arkansas and Louisiana Railway Company, now pending in the circuit court of the United States for the eastern district of Arkansas, reserving only questions of relevancy and competency.

JONES & MARTIN,
Solicitors for Plaintiff.
A. B. WILLIAMS,
Solicitor for Defendant.

178 STATE OF ARKANSAS, }
County of Howard. }

I, F. W. Lee, a duly qualified and acting notary public of the county and State aforesaid, do certify that the foregoing depositions of J. G. W. Yowell, George L. Rector, and John H. Bell were taken before me and were read to and subscribed *to* them in my presence at the time and place in the action mentioned in the caption, the said J. G. W. Yowell, George L. Rector, and John H. Bell having been first sworn by me that the evidence they should give in the

action should be the truth, the whole truth, and nothing but the truth, and that their statements were reduced to writing by me in their presence, both plaintiff and defendant being present in person and by attorneys at the examination.

Given under my hand and seal this 31st day of May, A. D. 1886.

[SEAL.] F. W. LEE,
Notary Public, Howard County, Arkansas.

(Endorsed:) Filed June 4th, 1886. Ralph L. Goodrich, clerk.

179 STATE OF ARKANSAS, }
County of Hempstead. }

Personally appeared before me, Charles Bourne, notary public in and for said State and county, J. D. Beardsley, to me well known, and, being by me duly sworn, states as follows: I am a resident of Washington, Arkansas, and have been since 1879. Between 1873 and latter part of 1879 I resided at Cairo, in West Va.

I came to Washington, Ark., in 1879, in consequence of a correspondence with Mr. W. H. Carruth, president of the Washington and Hope railway. I did not make any contract with the railway company at that time, but took from them an option giving me the right to contract with them, upon terms agreed, at any time within thirty days. On my return from Washington, Ark., to West Va., I passed through Memphis, Tenn. While there I bought from the county court of Shelby county, Tenn., on the 7th or 8th of July, 1879, as I think, a lot of railroad material, which comprised about 2¾ miles of iron rails weighing twenty-five pounds to the yard, one first-class narrow-gauge locomotive and tender, two narrow-gauge passenger coaches, two narrow-gauge flat cars, an iron turn-table, twelve thousand pounds of spikes, sufficient fish-plates and bolts for the iron, and some other material.

On my return to West Va. I went to New York to endeavor to borrow money to complete the road, and remained there for some time, but failed to get any money. After my return home I made efforts to borrow money at different places in the States of Pennsylvania, Ohio, Maryland, &c., but was unsuccessful. I returned to Washington, Ark., to return the papers, maps, profiles, &c., &c., connected with the road, which had been loaned me by the directory, and to advise them that I would not undertake the contract. Some negotiation followed and the original terms were modified, and on Sep. 10th, 1879, a contract was entered into. (See exhibit.) I went to work under this contract almost at once. I had been for some years engaged in lumber business at Cairo, West Va., and had about closed up when I first came to Washington, Ark. I had, as I remember, between three thousand
180 and four thousand acres of land near Cairo, West Va., which I considered and which was considered then worth $5 per acre. I had a lot of machinery which I thought was worth as second-hand machinery at least $3,000. I had a wooden railroad or tram-road about two and a half miles long running through the oil country, at Petroleum, West Va., which was earning a revenue above

all outlays of from $100 to $150 per month. I had sold about eight hundred acres of the land at $5 per acre before I came, and about that time I sold the road at Petroleum for $3,750. After I began work I entered into an arrangement with Mr. Vinton Alderman, by which I agreed that he should be associated in the enterprise with me, each to contribute money until the road was completed, and that when stock was obtained under the contract it was to be equally divided. It was agreed that we should settle between ourselves when the road was completed, and he who had contributed least should pay to the other sufficient to equalize the outlay. As the work went on we found that more money was required than we had expected. I sold the balance of the *road* I had at Cairo for $2.75 per acre, realizing several thousand dollars from that source. Still later I sold part of my machinery for $1,500. I bought iron on a credit to the amount of about $16,000 to $17,000, which debt bore interest at the rate of 8½ per cent. per annum. The road was completed under the contract some time in the latter part of 1880. In Dec., 1880, the directors passed a resolution declaring the road completed and requesting the Governor of Arkansas to convey to the road the land to which it was entitled by law when completed. The road was afterwards formally accepted by the directors as completed under the contract of date Jan. 1st, 1881. The stock of the road, amounting to $100,000, was all delivered to me except, as I remember, about $250, which was kept to qualify the directors to act as such and to maintain a legal organization. In building the road, including the material purchased by me from Shelby county, Tenn., I had contributed a great deal more than Mr.
181 Alderman. On a settlement I think he would have been indebted to me as much, perhaps, as $5,000. No settlement was ever made between us, nor did he ever request his stock transferred to him. I would have transferred him one-half of the stock I held upon request, with or without a previous settlement. Mr. Alderman had intended to come to Washington to live, but he abandoned this intention, and thereupon became desirous to sell his stock, and offered to sell it to me for $12,000. As the earnings of the road were small and it was yet an experiment I did not entertain the proposition. The debt for the iron was a first lien on the road. The land grant of about twenty thousand acres was of little value, being mostly forfeited lands and swamp or overflowed lands. Mr. Paul Beardsley, my brother, who is plaintiff in this case, was at this time on the Pacific coast, where he had been living since 1868 or 1869. He was at my house at Cairo, West Va., in 1876, and he then represented that he was wealthy, having, as I remember by his statement, about $80,000. He said he had made his money as a broker dealing in stocks and bonds. I learned that he afterward lost most of his money in speculation. Some time of the year 1881 I got a letter from him saying that he was coming East and would pass through St. Louis on his way to New York, and expressed the desire that I should come to St. Louis to see him as he went. I should have mentioned that before making my arrangement with Mr. Alderman to associate him with me in the enterprise I had written to Mr. Paul

Beardsley, then in California, asking if he had spare money, and, if so, whether I could get it on any terms to put in the road. He replied at that time substantially that he had all the money he had in a gold mine, which he represented as valuable, and that he was likely to sell it, and, if so, he would have plenty money to spare to iron and equip the road. In compliance with the request conveyed in the first-mentioned letter I went to St. Louis, and there met Mr. Paul Beardsley, in Oct., 1881, I think. He was in company with a young man named Casey, whom he introduced as a nephew of Gen. Grant. I learned from
182 him that he was going to New York on some scheme, which I did not have explained to me, and he seemed to expect assistance from Grant's people in New York. In conversation I expressed a desire to extend the road if I could get money. He said he had no doubt that he could get me all the money I needed in New York, and that he would look into the matter when he got there. I said I would be glad if he would. I had no confidence in his doing so, because I had had some experience in borrowing money in New York. After he went to New York he wrote to me for papers in regard to the road and a description of the country, &c., which I sent him. Nothing came of this. I did not write Mr. P. F. Beardsley to buy Mr. Alderman's interest, nor to go to New York to borrow money either for me or to buy Mr. Alderman's interest, nor did he go to New York at my suggestion. After he had been in New York for some time I received a letter from him saying he had failed to accomplish his object there, and had nothing to do, and asked me if I would not give him employment here on the road. The earnings of the road were small, and we did not need him, and I wrote him to that effect. He replied at once that he was out of available means and had his family dependent on him for support; that he thought he could be worth $75 per month to us here, and that he hoped I would employ him at that price to enable him to make bread for his family. While we did not at that time need Mr. Paul Beardsley, and I seriously doubted whether we could afford to employ him, he was my brother, and there seemed only one possible answer to this letter, and I wrote to him to come. He came at once and went to work, as I think, in the early part of Nov., 1881, or about ten months after the road was accepted as completed by the directors of the Washington and Hope Railway Company. Very soon after Mr. Paul Beardsley came I received a letter from Col. Paramore, president of Texas and St. Louis railway, then being built, saying that Mr. Alderman had offered him his interest in the road and asking me about the condition of it.
183 It at once occurred to me that this, if carried out, would involve us in trouble with the Iron Mountain railway.

I received Col. Paramore's letter on the mail which came into Washington at noon. Without any consultation with any one I wrote at once to Mr. Alderman saying I would give him $12,000 for his stock if he would give me time. This letter went out on the mail the same day at two o'clock p. m., and by return mail Mr. Alderman wrote me from Belpre, Ohio, that he considered his stock

sold to me. I state most positively that there was no agreement between myself and Paul Beardsley that I should buy this stock or any part of it in his interest, nor was there, as he says, any correspondence to ascertain that Alderman would grant a credit, nor was he at all consulted. From the time Mr. Paul Beardsley came to work, about the 1st of November, 1881, up to the time I wrote Mr. Alderman that I would take the stock I had neither written to Mr. Alderman nor received any letter from him about the stock. When Mr. Paul Beardsley learned that I had purchased Mr. Alderman's stock and now had all the stock of the road he began to importune me to let him have a part of it. He represented that he had a mine still in California which he expected to sell for a good deal of money, and that he would pay from the proceeds of the mine for any stock I would sell him. I had explained fully in my conversation to Mr. Paul Beardsley that the material, iron, locomotive, &c., got in Tennessee had not been settled for and was my personal property. I did not at the time have any faith in any results from Mr. Beardsley's mine in California, but some time after I had purchased from Mr. Alderman I yielded to his importunity so far as to agree to sell him $33,250 face value of the stock, for which he was to pay me $8,000. The stock was not to be delivered until paid for. There was no proposition or understanding that this was anything more than an agreement to sell so much stock for delivery when the money should be paid. There was no connection whatever between this sale to Mr. Paul Beardsley and my purchase from Mr. Alderman. The interest was made to date from time of my
184 purchase from Mr. Alderman, because I desired if the sale was consummated that the interest should offset the interest on $8,000 of the money I owed Mr. Alderman. Mr. Paul Beardsley understood that Mr. Alderman and myself had not settled, and I told him that as the case stood the material from Tenn. was my property apart from the company. I gave Mr. Paul Beardsley the memorandum, a copy of which he files in his complaint. I gave it to him either next day after the conversation in which I told him I would sell him the stock or at latest the second day after it. I told Mr. Paul Beardsley when I agreed to sell him the stock that I would sell it to be delivered only when paid for. There was no agreement nor suggestion that any revenue arising from it previous to delivery should belong to him or accrue to his benefit. In point of fact there never has been any dividend on the stock. At the time the sale was made I did not regard the transaction as of much consequence, because I had not much faith in Mr. Paul Beardsley's realizing much from a mine which he had left in California. From the 1st day of Jan., 1882, when I gave him this memorandum, until Jan. 16th, 1886, a period of more than four years, it was never again referred to *again* between us. During that period no word was ever said to me by Mr. Paul Beardsley in reference to his having or considering he had acquired any interest in the property, nor was anything ever said which led me to suspect that he entertained this idea. The whole matter was dropped as completely as though it had never been. No proposition was ever made to make any payment for or

on account of the purchase, nor did I ever again hear from Mr. Paul Beardsley any reference to the mine in California. I considered the purchase abandoned by him long since. In the early part of 1883, as I remember, when the stock of the Arkansas and Louisiana railway was issued to me to replace my stock in the Washington and Hope railway, I directed the secretary to issue some shares in the name of Mr. Paul Beardsley, which he did, delivering them to me. I never delivered this stock to Paul Beardsley, but some time later,
when I requested him to indorse this certificate of this stock so
185 that I could use it, he did so at once without claiming or pretending that he had any interest in it. After Mr. Paul Beardsley came upon the road, as before mentioned, when I was absent he was left in charge of the road. He was in the habit of getting money as he needed it from Mr. John Burt, the agent at Washington. Mr. Burt charged the money as paid Mr. Paul Beardsley on his cash books. We had then no auditor. We passed all our business, so far as we could, through the books of W. H. Carruth, who was president of the Washington and Hope Railway Company and treasurer, or the books of the firm of Baird and Carruth. I checked up the books of the agent every month and also Mr. Carruth's accounts. I found Mr. Paul Beardsley overdrew his salary almost constantly. I took occasion to sum up his overdrafts about Feb. 1st, 1883, and the overdraft was then between $50 and $300. It is my conviction that on Dec. 1st, 1883, it was not less than $400. Thinking that perhaps his salary was not sufficient, I said to him about Dec. 1st, 1883, without any solicitation on his part, that I had decided to advance his salary to $100 per month. He seemed quite pleased and thanked me. I said to him then that I did not wish any more money drawn from the agent; that I would instruct Mr. Carruth to pay him or credit him with his salary at the end of each month, and that he could keep his account there. It is not true, as asserted in the complaint, that no books of account were kept as between us. I always required, as a matter of business, that every dollar got by me should be charged up, and if Mr. Paul Beardsley ever got any money that was not charged to him it was without my knowledge. When Mr. Paul Beardsley's salary was advanced I abandoned the amount overdrawn and never had it carried upon Mr. Carruth's books against him, nor did I ever say anything about it to him. Soon after his salary was advanced and his account transferred to Carruth's I found, when I called for our balance there, that there was a part of it stopped for an overdraft of his account there. When this first occurred the amount was small, and I disliked, on Paul's account, to say to Mr. Carruth that I would
186 not recognize the shortage, and having once permitted it could not thereafter refuse it. This stoppage for his overdrafts recurred every time we had occasion to call for our balance during the year 1884, and grew steadily larger. In latter part of Dec., 1884, I got a statement of our cash in Mr. Carruth's office and found an amount of about $275 stopped to cover Mr. Paul Beardsley's overdraft of that day. I then told Mr. Carruth when he should credit Mr. Paul Beardsley for his salary that month to credit him

also and charge the road with whatever account might be necessary in addition to balance his account, and to receipt the account in full and send it to him. I said to Mr. Carruth then that thereafter he must understand that the account would be strictly between him and Paul. In checking up the treasurer's account for that month the auditor called my attention to a charge against the road to balance Mr. P. Beardsley's accounts, the amount so charged being about $187. By my instruction the auditor allowed the charge, and Paul took occasion to thank me afterwards for it. After the road was completed Mr. Paul Beardsley was sent to Nashville to live, and in addition to his salary was furnished a residence rent free. He remained there until his connection with the road terminated, on Feb. 15th, 1886. The first intimation I had that Paul claimed an interest in the road was conveyed to me in a letter dated Jan. 16th, 1886, at Nashville, Ark., in which, after speaking of other matters not material to this issue, he says: * * * "I think, however, with all good feeling and brotherly love for you and Susie, that it would be well for us to have a more definite understanding as to our business relations and standing in the road. I would suggest that some time in the near future, when you have the time to spare, we take this matter up and arrange it." * * *

This letter was received by me on Jan. 17th, 1886, and on the next morning, in a letter replying to him, I said to him, on Jan. 18th, from Washington: "If you have not a definite under-
187 standing as to our business relations it is due to you that you should have, and I will take the matter up whenever you wish." * * *

Thirteen days later, on Feb. 1st, from Nashville, he acknowledged this letter and said: "In relation to our business affairs, according to my understanding, my interest in the road or company is exactly one-half of what yours is. If this corresponds with yours I would be glad if you will give Judge Williams such data and instructions as will enable him to draw up such an instrument as will be necessary and proper under the circumstances to establish and set forth our respective interests in such a way that should accident befall either of us there could be no misunderstanding. Before doing this, however, I think it would be well for you to make this the subject of a letter to me, so that we may agree upon the principle points of such an instrument so as to avoid any unnecessary rewriting."

This letter of Feb. 1st, 1886, was the first intimation I ever had of the present claim set up by Mr. Paul Beardsley to one-third interest in the road. I wrote him temperately, advising him that I did not agree with him and endeavoring to show him how little foundation he could have for such a claim. He, however, insisted upon it, and I was soon after advised by Mess. R. B. & A. B. Williams that he had endeavored to retain them in a suit against me, and that he had informed them that he had retained Hon. D. W. Jones and declared his intention to have the road put in the hands of a receiver. He went to Little Rock within a couple of days, as I was well advised, to consult his attorney, and while he was

there I received a letter from Hon. D. W. Jones advising me that he was retained to prosecute suit against me. It then occurred to me that it would not be prudent to retain Mr. Paul Beardsley longer in a position where he had access to our safes, papers, books, &c., and I directed the auditor to advise him that we would dispense with his services from that day, Feb. 15th, and to say to him that he would be paid for the entire month, but that the remaining portion would be at his own disposal.
188 I requested him to deliver the property of the road in his possession, which he declined to do. I also requested him to turn in his passes, all of which were issued to him as an officer of this road and all of which had been sent to me at my request for him by the several roads which had issued them, and none of which could properly be used by him when he ceased to be an officer of the road. This he also declined to do. Being informed by the auditor that he had been requested by Mr. Paul Beardsley to furnish him transcripts from by books, I instructed him not to do so and not to allow Mr. Paul to have any access to the books at all. I also requested the secretary of the company not to permit him to have or have access to the books of the company. In doing this I knew perfectly well that these books and all things connected with them could and probably would be examined by the court or its authority and also by the plaintiff when he had brought his suit. I did not fear that both my books and the records of the company would — bear the closest investigation. I believed that Mr. Paul Beardsley was preparing to assert a claim which did not accord with the books or records. It was my belief that his object in referring to the books was that he might adapt his claim to them, and I was not willing that he should have the opportunity to do this. On Feb. 15th I informed our conductor, Mr. Edgar Holman, that Mr. Paul Beardsley was not any longer in the employment of the company, but I instructed the conductor that Mr. Paul himself and every member of his family should be permitted to ride over the road without being asked for fare, ticket, or pass. The conductor asked me if they would be permitted to take other people free, and I replied, "No; only his own family." A couple of days later the conductor told me that Mr. Paul Beardsley came down the road, bringing a negro woman, for whom he collected fare, and asked me if he had done right. I replied that he had, but asked if he knew why Mr. Beardsley had brought the woman. The conductor said he thought she was brought to take care of a couple of the children, and that she was
189 going back that night. I then instructed the conductor to pass her back free and return the money collected for fare coming down. This was, I think, Feb. 17th. I heard nothing more from the conductor at that time or until I saw the complaint, where I was surprised to see the statement there made in reference to the fare. I then called the conductor into my office and, learning the circumstances, requested him to make affidavit to the facts before a notary, which he has done and which will be submitted. During the time Mr. Paul Beardsley has been upon the road, a term of a little

over four years, he has never been in control of the operations or construction of the road, except when left in charge in my absence.

He had, I think, never been on any railroad until he came here, and never had anything to do with a locomotive until he came on this road. Without being, as he claims, either a good machinist or a good locomotive engineer, he is a very ingenious man and has rendered efficient service. I have always regarded him as a man of good judgment, and I have consulted him a good deal in regard to rolling stock and track and work on it. I have not consulted him generally in regard to operating the road; not nearly so much as I have Mr. W. H. Carruth or Mr. Wheless, the auditor. I have never consulted him as a tenant in common with me, and have never so regarded him. At the time the construction contract was made with the Arkansas and Louisiana railway, in May, 1883, it was proposed in my office and lay on my desk several days. He read it in my presence and said he would like to take it home and read it over again. I told him to do so. He returned it next day, I think, and said he thought it was a good contract. If he was a party to this contract or if I acted as a trustee for him in it I did it without any knowledge or suspicion of what I was doing. I supposed at the time I was making it in my own behalf. I told him I would not go into the directory in 1883 and told him my reason, which was that I understood that as a director I could not legally contract or be interested in any contract for the construction of the road. I declined election as a
190 director and gave the same reason at a meeting of the stockholders when Mr. Paul Beardsley was present. To the best of my knowledge and belief, Mr. Paul Beardsley has never contributed one dollar to or into either the Washington and Hope railway, the Arkansas and Indian Territory railway, or the Arkansas and Louisiana railway. He was always on a salary and he always drew his salary and, so far as I ever heard, made no protest or objection. He subscribed for stock in the Arkansas and Indian Territory Railway Company, and also for stock in the Arkansas and Louisiana railway, but he has never paid a cent on his subscription nor taken any steps to obtain this stock, and the only stock that has ever been in his name is that before referred to, which was a few shares of what was issued to me in the exchange for my stock in the Washington and Hope railway, which stock was put in his name by my order to qualify him as a director but has never been delivered to him and he has never paid a cent on account of it, and never asserted any right to it previous to February, 1886. When the Washington and Hope railway was sold to the Arkansas and Indian Territory Railway Company, on Sep. 18th, 1882, there was in its treasury the sum of $244.04 and no more.

It was at that time indebted to the St. Louis, Iron Mountain and Southern railway on account of freight transfers in the month of August, 1882, in the sum of $944.53, and for transfers of freight in the month of Sep., up to the day of sale, about $806.36. Its floating debt was at least $1,000, and probably more, and it owed, in addition, to the St. Louis Bolt and Iron Company on that day about $12,299.73, which was secured by a mortgage. This was all assumed by the

Arkansas and Indian Territory Railway Company. The Arkansas and Indian Territory — transferred most of this debt and a large additional one to the Arkansas and Louisiana Railway Company. At the time I leased the Arkansas and Louisiana railway, May 22nd, 1883, I assumed all the debt of the company. Of this I remember there was $50,000 secured by a mortgage, which I agreed to pay and cancel.

191 There was about $12,000, including a payment advanced by me before the lease was ratified, due the St. Louis Bolt and Iron Company, also secured by a mortgage, a floating debt of perhaps over $3,000, and a debt due the St. Louis and Iron Mountain Railway Company for transfer of freights of near $2,000, and wages and salaries of employees, and other local debts amounting to from $1,000 to $1,500. This I have wholly paid and discharged, except a balance of $780 to the St. Louis Bolt and Iron Company, for which they hold my note, due and payable May 19th, 1886. A large part of this debt has been paid by my delivering bonds received on account of construction under my contract. Of the amount which has been paid to Mr. Vinton Alderman not one dollar was ever paid, directly or indirectly, by the Washington and Hope Railway Company or by either of the successive companies. The amount paid to this date is about $5,500, of which part has been paid by me from means obtained outside of all these companies and outside of my connection or transactions with them or either of them. Part has been paid by me, since I leased the road, in cash and part in my personal notes of hand, of which one for $500 is now outstanding. At the time this suit and application for a receiver was instituted I was in the city of New York endeavoring to negotiate for means to extend the present road northwest as far as Fort Smith, Ark., and southeast as far as Alexandria, Louisiana. These negotiations had so far progressed with parties in New York that they had agreed to furnish at once money to build forty miles of road, with an option for six months to furnish money to complete the entire line from Fort Smith, Ark., to Alexandria, with a penalty on them if they should only elect to furnish money for the first forty miles. This understanding was reduced to writing, but before signing regular contract I was advised by the telegraph of this suit, and I at once suspended negotiations and returned home.

J. D. BEARDSLEY.

(Indorsed:) Filed Aug. 20th, 1886. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

192 In United States — Court for the Eastern District of Arkansas.

PAUL F. BEARDSLEY, Plaintiff,
vs.
J. D. BEARDSLEY *et als.*, Defendants.

Deposition of J. D. Beardsley, Defendant in the Case.

Question. What is your name, residence, age, and occupation?
Ans. My name is J. D. Beardsley; I have resided in Washington,

Ark., for the last seven years; I am 49 years of age; I am operating the Arkansas and La. railway.

Qu. Did you build the Washington and Hope railroad; and, if so, how came you to do so?

Ans. I did; I built it under a contract with the Washington and Hope Railway Company, which was made in September, 1879.

Qu. When did you begin work on this road and at what time was it completed?

Ans. I began it in September, 1879. It was opened for traffic about September, 1880, and was accepted as completed under our contract by the Washington and Hope Railway Company of the date of January, 1881.

Qu. Was Mr. Paul F. Beardsley with you or with the railroad company during the construction of the road?

Ans. He was not with me or with the R'y Co. The Co. then had no employees. He was in California at that time.

Qu. At what time and under what circumstances did he first enter the employment of the road?

Ans. He came to the road as an employee. He had gone East from California in the fall of 1881; probably in September.

193 In October, 1881, he wrote me from New York asking if I could give him employment on the road. At that time the earnings of the road were very small and I was obliged to use the closest economy to meet current expenses; the business was very light and we did not need him. I felt, therefore, that we could not afford to employ him and wrote him to that effect. He replied at once, saying that he was entirely out of available means and had his family on his hands, and urged me to employ him at seventy-five dollars per month to enable him to support his family. Upon that I wrote him to come, and he came at once and went to work on the road about the 4th or 5th of November, 1881, I think.

Qu. Was the road then completed and in operation?

Ans. Yes; it had been in operation for more than a year. It had been accepted as completed under the contract from January 1st, 1881, which was over ten months before Mr. Paul Beardsley came.

Qu. What had the road cost up to the time Mr. Paul Beardsley first came?

Ans. From the beginning up to that time it had cost over fifty thousand dollars.

Qu. What was the indebtedness of the road when Mr. Paul Beardsley first came?

Ans. About seventeen or eighteen thousand dollars.

Qu. What was the stock of the road?

Ans. The stock was one hundred thousand dollars, nominal or face value.

Qu. By whom was this stock held?

Ans. Ninety-nine thousand eight hundred dollars was in my name, having been received by me for the construction of the road under the contract; the balance was owned by several citizens of Washington, Ark.

Qu. Did you own all the stock that stood in your name at that time?

Ans. No; one-half of it belonged to a Mr. Alderman, subject to a settlement of accounts between us as to the amount each had contributed to construction.

194 Qu. How did Mr. Alderman come to own this stock?

Ans. After I had made the contract with the Washington and Hope R'y Co. and begun the work I made an arrangement with Mr. Alderman by which he went into the enterprise with me. It was agreed between us that each should contribute until the road was completed, and that the stock received for building should be equally divided between us. It was also agreed that when the road was completed Mr. Alderman and I should have a settlement, and he who had contributed the least should pay to the other sufficient to equalize the outlays.

Qu. How came Mr. Alderman's stock to be in your name?

Ans. Mr. Alderman was not known to the R'y Co. in the transaction. They therefore delivered the stock to me.

Qu. Was there a written contract between you and Mr. Alderman?

Ans. No; the understanding was verbal.

Qu. Was not that rather an unbusinesslike way to undertake so large and complicated a matter on a verbal understanding?

Ans. Probably it was; but Mr. Alderman and myself had transacted business with each other for a term covering several years. Some of the transactions before had been quite large and complicated. We never had a written agreement between us. We never had any trouble, and feared none.

Qu. Was your arrangement with Mr. Alderman carried out? If not, why?

Ans. Not as originally contemplated. Mr. Alderman went into the enterprise with the intention of moving to Arkansas to reside and taking part in operating the road. Before the road was completed he abandoned this plan. He then became desirous of selling his investment. He began to urge me to purchase his stock as early as January, 1881, and probably earlier.

Qu. Did you deliver Mr. Alderman his portion of the stock? If not, why?

Ans. I did not. I would have delivered it if he had called for it, but he never did.

195 Qu. Did you have any settlement with Mr. Alderman?

Ans. Not on the basis originally proposed. I afterward bought his investment for twelve thousand dollars. It was understood that this purchase settled the whole matter.

Qu. Who contributed the larger amount to the construction of the road, you or Mr. Alderman?

Ans. As I remember, there was not much difference in the money contributed by each; but, in addition to the money I contributed, I put in a lot of material, consisting of iron rails, spikes, fastenings, a locomotive, and cars, which material was worth at the time probably over ten thousand dollars.

Qu. Do I understand that if you had settled with Mr. Alderman instead of buying him out he would have owed you about one-half the value of the material you furnished?

Ans. Yes; I think, including the material, he would have owed me as much perhaps as five or six thousand dollars.

Qu. Then, in buying Mr. Alderman's stock at twelve thousand dollars, did you consider that you were getting it below its value sufficiently to cover the amount he would otherwise have had to pay you on account of the material?

Ans. Yes; I think so.

Qu. Will you state exactly what the material was, when, where, and how you got it?

Ans. As I remember, the material consisted of something over one hundred and twelve tons of twenty-five pound iron rail, six tons of railroad spikes, one narrow-gauge locomotive, two second-class narrow-gauge passenger coaches, two flat cars, and the irons of a turntable. The weight here given is in tons of two thousand pounds. I was in Memphis, Tenn., in the month of July, 1879, and while there I bought this material from the county court of Shelby
196 county, then in session in Memphis. The purchase was made either on the 7th or 8th of July. I am able to fix the date by being there 4th and leaving there the day before the stampede from the yellow fever, which was, I think, the 10th of that month.

Qu. You bought this material, then, before you contracted to build the road between Washington and Hope?

Ans Yes.

Qu. Did you pay for this material with your own money or with money that belonged to you jointly—that is, to you and Mr. Alderman?

Ans. Mr. Alderman and I never had any money jointly. I had my own money to pay for it. In the construction of the road I handled all the money used. I went back and forth between Washington, Ark., and Cairo, West Va., where my residence was. I used to bring money with me to Washington. Mr. Alderman collected a good deal of money for me in one way or another, as much as nine or ten thousand dollars. A portion of this was sent to me by him in checks and drafts and used in construction. Mr. Alderman also sent money of his own in the same way.

Qu. When you decided to buy Mr. Alderman's stock how long were you negotiating with him for it?

Ans. I did not negotiate with him at all. He had offered me the stock. He had frequently urged me to buy it through the year 1881, but I did not consider it at all previous to the day I made the purchase.

Qu. Why?

Ans. Because the earnings of the road were very small, and its ability to sustain itself was not clear. I had put most of what I had into it, and I did not want to get in any deeper until I saw a better prospect. Mr. Alderman had offered me his investment for twelve thousand dollars, which was very low, as I thought, but I did not want it.

Qu. Why, then, did you buy it?

197 Ans. I got a letter from Col. Paramore, then president of the Texas and St. Louis railway, saying that Mr. Alderman had offered to sell him his interest, and he asked me for information. In view of the fact that the Texas and St. Louis was being built to parallel the Iron Mountain R'y, I thought if this sale was made we would incur the hostility of the Iron Mountain and be ruined. To prevent this I wrote to Mr. Alderman on the same day I received Col. Paramore's letter that I would take his stock at twelve thousand dollars if he would give time to pay for it. Within a week I received a letter from him saying he considered it sold to me.

Qu. What was the date of your purchase of Mr. Alderman's stock?

Ans. I think it was on Nov. 10th, 1881.

Qu. How long was that after Mr. Paul Beardsley came to the road?

Ans. I think it was about four or five days. I do not think it was longer than that.

Qu. Mr. Paul Beardsley says in his complaint that after he came to Washington you and he consulted together about buying Mr. Alderman's stock, and that having ascertained that Mr. Alderman would sell it on a credit it was decided between you that you should buy it and let him have two-thirds of it. Is that correct?

Ans. That is a mistake. I never contemplated buying it until I got Col. Paramore's letter. On reading that I decided instantly that it was necessary to buy it if I could to protect my investment in the road. I received Col. Paramore's letter in the mail that came in then at noon. I at once wrote Mr. Alderman that I would take his stock at twelve thousand dollars if he would give me time to pay for it. This letter went out on the mail which left the same day at 2 o'clock p. m. Previous to writing this letter I had had no correspondence with Mr. Alderman for some weeks. I doubt if there had been any correspondence about the purchase. What had

198 passed was, I think, verbal. When we met Mr. Alderman lived at Belpre, Ohio, but had lumber mills in West Va., where he spent most of his time. It was always a week before I could get an answer to a letter from him, but it took oftener ten or twelve days. As Mr. Paul Beardsley had only been there at most five or six days there was not time for any correspondence, and he is evidently mistaken. When I wrote the letter I did not know whether Mr. Alderman would grant a credit or not.

Qu. Did you consult Mr. Paul Beardsley in reference to making this purchase after getting Col. Paramore's letter and before you wrote to Mr. Alderman?

Ans. I did not. I told him afterwards, but I do not think I told him until after I received Mr. Alderman's reply.

Qu. Did you afterward sell Mr. Paul Beardsley some stock; and, if so, how much?

Ans. I did sell him some stock, or, as I understood the transaction at the time, I agreed to sell him $33,250 face value of the stock of

the Washington and Hope Railway Company, which I was not to deliver until paid for. The price to be paid was $8,000.

Qu. When was this sale?

Ans. On December 31st, 1881.

Qu. Was that after you had purchased from Mr. Alderman?

Ans. Yes; that was about six weeks or more after I had bought from Mr. Alderman.

Qu. Did you have the stock on hand at the time you made this sale to Mr. Paul Beardsley?

Ans. I did.

Qu. Why did you not deliver it to him then?

Ans. Because he did not have the money to pay for it.

Qu. What were the circumstances of the sale and the terms?

199 Ans. Mr. Paul Beardsley had been importuning me to sell him some of the stock from a time beginning soon after his arrival. He said he had no money, but represented that he had left a valuable mine and machinery in California which he was negotiating to sell and which would realize a good deal of money. He proposed to pay from this source for any stock I would let him have. I finally agreed to sell him thirty-three thousand two hundred and fifty — ($33,250) face value of the stock for eight thousand dollars ($8,000). This was substantially at the same rate I had paid Mr. Alderman. I explained then, and he understood, that in parting with the stock at this price the material I had bought in Tennessee was my property—that is, the road was to pay me for it. The understanding was that the stock was not to be delivered until it should be paid for. It was also agreed that the $8,000 should bear interest from the date of my purchase from Mr. Alderman.

Qu. Was there any connection between this sale and your purchase from Mr. Alderman?

Ans. No; there was not.

Qu. Then why was the interest to run from the time of your purchase from Mr. Alderman?

Ans. Because I sold him the stock at almost exactly the same price that I was to pay per share to Mr. Alderman for what I got from him. If I had not made the interest run from that date I would have been agreeing to sell stock for less than I had bought some for.

Qu. When did you expect to deliver him the stock?

Ans. I expected to deliver it whenever he should pay for it.

Qu. How long did you expect the transaction to stand open?

Ans. From what he told me about the probability of selling the mine I did not expect it to stand open long.

Qu. When did you give him the memorandum of the

200 transaction which he exhibits?

Ans. I gave it to him the next day after I had agreed to sell him the stock. It was January the 1st, 1882.

Qu. Why did you give him this memorandum? Did he ask you for it?

Ans. I gave him the memorandum because in thinking of the matter that night it occurred to me that there might come up some

questions afterwards about the time from which the interest was to run or the exact amount of stock I had agreed to let him have for the money. The memorandum was made by me without any request from him. He did not ask for any writing.

Qu. What did you intend to show by the memorandum?

Ans. The principal idea was to fix the date of the interest and the amount of stock, but I intended it to show that I had agreed to sell him $33,250 face value of the stock, to be delivered only when he should pay for it.

Qu. Mr. Paul Beardsley says in his complaint that this memorandum does not correctly describe the transaction. He says that the sale was for one-third of all the stock, and that the sale was for thirteen hundred and thirty-three and one-third shares, amounting to thirty-three thousand three hundred and thirty-three and one-third dollars, and that upon the receipt of this memorandum he went heartily and earnestly to work, &c., &c. What do you say to that?

Ans. If this memorandum is of such a character as to pass the title to the stock before payment by him and delivery to him I say also that it does not correctly describe the transaction. I also agree with him that it does not correctly describe the transaction in the number of shares set out. The shares were twenty-five dollars each, and it is therefore apparent that the memorandum cannot be correct as to the number. I do not, however, agree with him as to the amount or the number of shares. It would have been impossible to have made a delivery of such fractional stock as he asserts was
201 sold, as the shares of twenty-five dollars cannot be divided in that way. Besides this I had only $99,800 of the stock, and $33,333.33 would be more than one-third of this. As the memorandum was made by me expressly to fix the amount and time I am able to say positively that the amount there set forth is the amount I agreed to let him have—that is, $33,250 of the face value. His declaration that after the receipt of this memorandum he went to work earnestly does him injustice, I think. He had then been in the employment of the road for some time. I did not observe that there was any difference in the quality of his work before and after my agreement to sell him. In reference to the amount of stock he claims I sold and the amount that was put in the memorandum, the absence of the fractions in the memorandum would at once have been noticed when he read it. When I gave it to him he read it over and put it in his pocket.

Qu. How much stock did you have at the time you agreed to sell Mr. Paul Beardsley?

Ans. I had ninety-nine thousand eight hundred dollars, face value.

Qu. Who, then, held the rest of the stock?

Ans. I think all the rest was held by Hon. J. K. Jones, W. H. Carruth, A. B. Williams, W. P. Hart, R. B. Williams, J. D. Conway, Thos. H. Sims, and Henry B. Holman.

Qu. Were these parties "*bona fide*" owners of the stock they held?

Ans. I should say they were. I think every dollar of stock they had cost them from twenty to fifty times its face in cash.

Qu. Did they get their stock from you?

Ans. No; they subscribed for their stock in the original company and paid for it. I got my stock from them.

Qu. What finally became of the Washington & Hope railway stock?

Ans. On September 18th, 1882, the Washington and Hope railway was sold to the Arkansas and Indian Territory R'y
202 Company, and that company agreed to give the holders of the Washington & Hope stock, and they agreed to accept for their stock an equal amount of the stock of the Ark. & Ind. Ter. R'y Co. On the 17th of June, 1883, the Arkansas and Indian Territory railway was sold to the Arkansas and Louisiana Railway Company, and that company agreed to give the holders of the Ark. & Ind. Ter. stock, and they agreed to accept for their stock a like amount of the stock of the Arkansas and Louisiana Company. By these two transfers the stock of the Washington and Hope Railway Company was replaced by a like amount of the stock of the Arkansas and Louisiana Railway Company.

Qu. Was Mr. Paul Beardsley aware of these transfers?

Ans. He was. He subscribed for stock in the Arkansas and Indian Territory railway at its organization and was elected a provisional director in that company. As such director he was a party to the purchase of the Washington and Hope railway and aware of the terms of that purchase. At the organization of the Arkansas and Louisiana Co. he subscribed for stock in that company and was elected a provisional director in that company. In the sale of the Arkansas and Indian Territory railway to the Arkansas and Louisiana Railway Company he was therefore a party to this transaction on both sides, being at the same time a director in both companies.

Qu. In these transfers did he claim any interest or was he recognized as a party in interest? I mean as to the Washington and Hope stock.

Ans. I did not understand that he made any such claim. After the sale of the Washington and Hope railway had been consummated all the stockholders of that company signed satisfaction for their stock on the records of the Arkansas and Indian Territory Railway Company. Mr. Paul Beardsley was not a stockholder in the W. & H. Railway Company, and did not then claim to be. He did not sign satisfaction nor was he asked to do so. When the sale
203 of the Arkansas and Indian Territory railway to the Arkansas and Louisiana Railway Company was made the stockholders of the former company were required to sign satisfaction on the records of the latter company. Every one of these were "*bona fide*" stockholders except Mr. Paul Beardsley, holding their stock in place of their stock in the W. & H. Railway Company. As Mr. Paul Beardsley had subscribed for stock in the Ark. & Ind. Ter. Company, though he had not paid anything on his subscription, it was considered that he should sign satisfaction in that case, and he did so.

Qu. Up to the time of the sale of the Washington & Hope railway and the transfer of that stock had Mr. Paul Beardsley paid you the eight thousand dollars or any part of it on account of the purchase?

Ans. He had not paid a cent up to that time, nor has he at any time ever paid or offered to pay me a cent on account of it.

Qu. What reason has he given for not paying you?

Ans. He has never given any reason. From the 1st day of January, 1882, when I gave him the memorandum he exhibits, he never spoke to me again about the transaction until some time in February, 1886, when I first spoke to him about it.

Qu. Do you mean to say that from the time you gave him this memorandum, on January 1st, 1882, the transaction was not again mentioned or referred to between you for more than four years?

Ans. Yes; that is what I say.

Qu. Was there during that time any understanding between you that he had an interest in the property?

Ans. Never at any time.

Qu. Was there at any time during those four years any conversation between you in regard to his having an interest in the road?

Ans. Never at any time.

Qu. Did he sell his mine?

Ans. I do not know. I do not remember to have heard
204 any mention of the mine after January 1st, 1882.

Qu. Yet, during these four years or more you were constantly with him, seeing and conversing with him almost daily and hourly?

Ans. Yes; I was with him a great deal. During part of the time I boarded at his house. He was acting as assistant superintendent of the road and that relation threw us together a great deal.

Qu. Were your relations to each other friendly—confidential?

Ans. I think they were more—they were brotherly. I do not remember that we ever had an unpleasant word. I had nothing kept from his knowledge in connection with the road or its management.

Qu. Did you not think it strange that in all these four years and more he never offered to pay you anything on account of the purchase nor even mentioned it to you?

Ans. No; with the understanding I had of the transaction I did not think it very strange.

Qu. Will you explain that?

Ans. I regarded the transaction as a conditional sale of so much stock to be delivered and the title to pass only when paid for. As he had given me no contract, I did not consider that I could compel him to take the stock and pay for it, even if he had the money. I did not even have a copy of the memorandum which he held. The earnings of the Washington and Hope railway were so small and the outlook so unfavorable afterwards that if he had got the money he expected he probably would not have been willing to have paid for the stock and taken it. As I heard no more about the mine, I concluded that it was probably worthless and could not be sold.

When he did not again refer to the matter for some months I thought the sale was off.

Qu. You said the matter was not again referred to between you until you spoke to him about it. Where and when was that, and what did you say to him?

205 Ans. It was at Nashville, Ark. It was in February, 1886, after he had asserted this claim. I told him at that time that he could have the stock even now, if he would pay for it.

Qu. What stock did you mean?

Ans. I meant the $33,250 face value of stock that I had agreed to sell him in 1881.

Qu. What reply did he make to you?

Ans. He said he did not owe me a cent for the stock, or that he would not have to pay me a cent for it, or words to that effect.

Qu. What did he mean by that?

Ans. I did not understand what he meant.

Qu. Have you ever been paid for it or anything on account of it?

Ans. Not a cent that I know of.

Qu. Did you say that you received an amount of the stock of the Arkansas and Louisiana Railway Company equal to and in exchange for your Washington and Hope stock?

Ans. Yes.

Qu. Then you now hold in place of the W. & H. stock $99,800 face value of the stock of the Arkansas and Louisiana Railway Company?

Ans. No; I do not hold quite so much. When the stock was issued to me, knowing that each of the old directors had his stock at a price ranging from twenty to fifty times its face value, I allotted to each enough to give him one thousand dollars face value. This left me $92,000. Out of that I had some put in the name of Mr. Paul Beardsley to qualify him to act as a director.

Qu. Was not Mr. Paul Beardsley already a director of the Arkansas and Louisiana railway; and, if so, why was it necessary to issue stock in his name?

Ans. He had subscribed for stock in the Arkansas and
206 Louisiana Railway Company at its organization. On this subscription he had been elected a provisional director, but no certificates were ever issued on this subscription and all of the original subscriptions were abandoned, and he therefore had no stock of his own.

Qu. What was the necessity of making him a director?

Ans. There was no necessity at all. There were eight directors without him. It was done to please him and to give him standing.

Qu. Will you state as fully as you can what was the condition of the Washington and Hope railway, both physically and financially, when it was sold to the Arkansas and Indian Territory Railway Company?

Ans. It was not good in either respect. During the time I had been operating the road—that is, between two and three years—its gross earnings had not exceeded about twelve thousand dollars per year. We started with a new road and an indebtedness of about eighteen

thousand dollars, of which over sixteen thousand dollars was for iron rails, for which I had given my individual notes, which were secured by a mortgage on the road. The locomotive put on the road was a good one and had been put in first-rate order in the shops of the Memphis and Little Rock railway. After operating the road for two years with the utmost economy this was its condition: Its indebtedness was considerably greater than at the start. There had been an apparent reduction of the mortgage debt of about two thousand dollars, but this had not been paid from the earnings of the road, but from the proceeds of notes of the citizens of Washington paid me under my original contract for building the road and which belonged to me personally. Even excluding this, however, the debts were larger than at the start. The iron rails had begun to show wear and a good many of them were no longer fit for use and needed to be replaced. The life of the ties was at least half gone. The locomotive was so run down in condition that it was hard work to keep it going, and it sometimes took the whole day to make the round trip to Hope, a distance
207 of ten miles. The track was in such bad condition that the cars were constantly getting off. There was no money on hand for repairs of any kind. The directors had fixed my salary at two thousand dollars yer year. More than half of my salary for the whole time was due and unpaid, and is still so. The Iron Mountain Railway Company delivered us freight with their charges, which we collected for them. We settled with the Iron Mountain R'y about the last of each month for the freights collected the previous month. We should therefore have had on hand their collections for two months to pay for one. Yet, so short were we of funds that we were almost always obliged to borrow from Mr. Carruth, our treasurer, to make up the amount we owed for freights collected. The mortgage notes were overdue and the mortgagees could have foreclosed at their pleasure and sold the property. There was, as I remember, about two hundred dollars in the treasury at the time the road was sold, and we owed the Iron Mountain Company from $1,500 to 2,500 for freight collected for them.

Qu. I understand you to say that you did not draw one-half your salary from the Washington and Hope Railway Company during these two years, and that the balance is still owing you. Did Mr. Paul Beardsley draw the whole of his salary during these two years?

Ans. Your understanding is correct. Mr. Paul Beardsley drew his salary during that time and overdrew it considerably, perhaps as much as $400.

Qu. Did he ever make the overdraft good?

Ans. No, he never did.

Qu. Did the road receive any assistance from outside sources during this time?

Ans. Not to any considerable extent. I received some money from sales of personal property and from debts due me in West Va. which I put in. From this source the road got perhaps be-
208 tween one and two thousand dollars. I had a lot of personal obligations of citizens of Washington, amounting to about

eight thousand dollars. I collected a considerable portion of this amount and devoted it to the obligations of the road.

Qu. Do you mean that you put in these sums after the road was finished and accepted by the company?

Ans. Yes; that is what I mean.

Qu. Did Mr. Paul Beardsley ever put any money in, in the same way?

Ans. No; not within my knowledge. So far as I know, Mr. Paul Beardsley has never put a cent into the road in this way or in any other way.

Qu. If the Washington and Hope railway had not been transferred to the Arkansas and Indian Territory railway could it have sustained itself?

Ans. Without outside assistance the road could not have sustained itself. I am satisfied that reaching from Hope to Washington only it would never have been self-sustaining. As it then stood it was insolvent and existed only by the forbearance of its creditors.

Qu. Well, what was the result, and how was it brought about?

Ans. I was constantly trying to get money to build more road. I believe as the case stood it was only a question of time when I should lose what I had invested. I was also held personally to Mr. Alderman for the amount I had agreed to pay him for his stock. I tried to negotiate for money in New York, Boston, Philadelphia, Baltimore, St. Louis—anywhere I thought there was any chance of success. Finally, Mr. R. S. Hays, who was then first vice-president and general manager of the Mo. Pacific railway system, including the Iron Mountain, and whom I had often before importuned for assistance, said to me, in July, 1882, that he would help me out. He said that he would let me have iron rails to replace the light rail that was then on the road, and also to build fifty miles more of road.

209 Upon finding that I could get the heavy rail I then for the first time proposed to change the gauge to the standard. Mr. Hays at first did not approve of this, but after reflecting he assented and said he would furnish me a couple of large locomotives and such other rolling stock as might be needed. He told me to sit down in his office and write a contract to this effect and he would sign it. He said that while he would furnish material and rolling stock he could not furnish any money. I began to write a contract as between the Iron Mountain Railway Company and the Washington and Hope Railway Company. Mr. Hays, observing this, said he would prefer to deal with me in the matter, observing that he did not think there was much in the Washington and Hope Railway Company. I then wrote a new heading, making the contract between the Iron Mountain railway and myself and the Arkansas and Louisiana railway, which was the road we were going to build. It was then agreed that we should build north as far as Nashville or Center Point. Some time later in a conversation on his private car Mr. Hays said to me that he would let me have money also for construction. He was then on his way to El Paso, and he at that time telegraphed to Mr. D. S. H. Smith, the treasurer of the Iron Mountain Railway Company, to furnish me $5,000 to com-

mence with. This was in the last part of July, 1882. On the 1st or 2nd day of August, 1882, I began grading a new road-bed north of Washington and continued to grade north. This grading was not in the territory covered by the charter of the Washington and Hope railway. It was, however, covered later by the charter of the Arkansas and In. Ter. Railway Co., taken out in pursuance of the plans outlined in my understanding with Mr. R. S. Hayes. In the latter part of September, 1882, the Washington and Hope railway was sold to the Arkansas and Ind. Ter. railway, the latter company assuming all debts and obligations of the former. After this sale work was begun on the narrow gauge, the light rails were taken up and replaced with a heavy rail, and the gauge was changed to the standard. The Arkansas and Ind. Ter. Railway Company authorized a mortgage to secure bonds to the extent
210 of $5,000 per mile. Before the sale of the Arkansas and Ind. Ter. railway to the Arkansas and Louisiana Railway Company I had changed the gauge of the road from Hope to a point about seven miles north, where the old road-bed was abandoned and a new bed graded. On this seven miles heavy iron rails were put down. About ten miles of new road-bed was graded, and about seven miles of new standard-gauge road was under iron. On account of this work the company had delivered me $50,000 of their first-mortgage bonds, and I had paid them to the Iron Mountain Company. At the time of the sale to the Arkansas and Louisiana Railway Company, on June 17th, 1883, the Arkansas and Ind. Ter. railway was largely indebted to me. This debt was assumed by the purchasing company and was considered in the construction contract afterwards made with that company.

Qu. At what time was the construction contract between you and the Arkansas and Louisiana Railway Company ratified?

Ans. On May 20th, 1883, I think.

Qu. Had the permanent organization of the company been effected previously?

Ans. Yes; permanent organization was effected.

Qu. Who were the officers and directors who were elected at the permanent organization?

Ans. W. H. Carruth was president, R. B. Williams was secretary. These, with A. B. Williams, H. B. Holman, Thos. Simms, Paul F. Beardsley, W. P. Hart, J. K. Jones, and J. D. Conway, constituted the board of directors.

Qu. Were you not a director then?

Ans. No; I understood that as a director I could not legally contract for nor be interested in a contract for construction with the company. At the election of the permanent directors it was proposed to elect me, but I declined, stating to the meeting that I desired to contract for the construction of the road, and that I
211 was advised that as a director I was prohibited from being interested in any construction contract.

Qu. Was Mr. Paul Beardsley elected a director then, and was he present when you made this statement?

Ans. He was elected a director at that meeting. He was present

and heard what I said in reference to the contract. I had, however, previously told him that I could not be a director and why.

Qu. Had you told Mr. Paul Beardsley then that you were going to take a contract for the construction of the road?

Ans. Yes; I had told him just how I intended to proceed. I had explained my intentions quite as fully to other parties, perhaps to A. B. Williams, to W. H. Carruth, and I think to R. B. Williams and others.

Qu. In your conversation with Mr. Paul Beardsley previous to making the construction contract, when talking of it, did he show by any expression or act that he understood that he was interested in it, or that he claimed any interest in it or any ownership in the road?

Ans. I cannot remember any single act that he did or anything that he said that gave me any suspicion of any such claim or intention. I had not probably forgotten my agreement to sell him the stock, but at the time it was made I regarded it purely as a stock transaction. As I understood it, if he had paid me for the stock and taken it he would have owned just the $33,250 of stock and no more, unless he had by some way acquired additional stock by additional purchase or for value received. It was not my understanding at the time I agreed to sell him the stock nor has it been at any time since that I could compel him to take the stock and pay the eight thousand dollars and interest, even if he had the money. I kept no copy of the memorandum, and if I had a copy, or the original, it was not binding upon him, he not having signed it. Owing to the length of time that had passed without reference to it I suppose it had been abandoned long before.

Qu. You say you did not consider that you could at any
212 time have compelled Mr. Paul Beardsley to take the stock. Of what effect, then, did you consider the memorandum you gave him?

Ans. I understood it to be virtually giving him an option on that much stock.

Qu. At the time you entered into the construction contract with the Arkansas and Louisiana Railway Company how much stock did you have in that company?

Ans. I had in all $92,000 at most. I think, however, that I had $82,000 in my own name. I had also had in my possession $10,000, which I had put in Paul Beardsley's name, but which also belonged to me. This stock was not delivered to Mr. Paul Beardsley nor was it intended to be. The balance of the $100,000 was held by the directors.

Qu. Was this stock obtained from the company for value received; and, if so, how?

Ans. It was obtained for value received. It was issued under the contract of purchase to replace the $100,000 of Washington and Hope stock.

Qu. Was the stock you had agreed to sell Mr. Paul Beardsley to come out of this stock?

Ans. Yes; if he had called for his stock it would necessarily have come out of this.

Qu. What other stock of the Arkansas and Louisiana Company was issued at the time you made the construction contract?

Ans. None.

Qu. Were any other stock or bonds authorized at that time; and, if so, for what purpose?

Ans. The Arkansas and Louisiana Railway Company had, in a regular and legal way, authorized the issue of $20,000 stock per mile and the issue of $15,000 per mile of first-mortgage bonds. The purpose for which these bonds and stock were to be used was defined in the resolution which authorized them. They could only

213 be legally used for construction. As I remember, the president and secretary were authorized to sell the stock and bonds or any part of them for cash, if they could be so sold, and to use the funds so obtained in construction, or they were authorized to contract for the construction of additional road, paying therefor in stock and bonds or part in stock and bonds and balance in any proceeds of stock and bonds that might be sold.

Qu. Were any of the stock or bonds sold for cash?

Ans. No; I think not; I do not think any could have been sold for cash at that time.

Qu. Were the provisions of your contract with the company consistent with the authority and purposes for which this stock was authorized?

Ans. Yes; I think it was exactly in accordance with the intention of the issue of the stock and bonds.

Qu. With whom did you make the construction contract?

Ans. I made it with the directors. I drew the contract and submitted it to the president and secretary, who approved of it. It was then submitted to the directors at a meeting called for that purpose, and was unanimously approved and ordered ratified by the directors.

Qu. Was Mr. Paul Beardsley present and acting as a director at this meeting; and, if so, did he join in the execution of the contract?

Ans. He was present and acting as a director. He voted to ratify the contract.

Qu. Did he know the conditions of the contract?

Ans. Yes; the contract was read over and discussed at that time, but he was fully acquainted with the condition of it before. I prepared it in my office, in Washington, and it lay there for some time. He read it over there, and asked me if I had any objections to his taking it home to read at his leisure. I consented, and he took it and had it a day or two. When he returned it I asked him if he saw any defects in it or would suggest any improvements to it. He said substantially that he thought it was a good contract and covered the whole ground.

214 Qu. Did he then or at any other time say or intimate to you that he considered himself a party to or interested in this contract?

Ans. No; not then nor at any other time.

Qu. In making that contract did you intend to include him as a party, or did you make it in good faith as between you personally and the company?

Ans. I made the contract in perfect good faith with the company, acting for myself only, and without any thought of his having any interest, either legally or morally. If I had intended to include him in the contract I would have made him a party to it and had him withdraw from the directory. Every member of the directory was, as I think, a personal friend of mine and also of his. I was on intimate and confidential terms with all of them, and so was he, as I think. If he intended to be included in the contract or thought he had an interest in it, or if I had intended that he should be a party in interest, there was no reason whatever for any concealment and collusion, or for misleading the other directors, or for doing what we both knew was contrary to law. His withdrawal from the directory would have left a greater number of directors than the law required.

Qu. Is there any connection between this contract and the stock you acquired under it and the stock you previously held in the company?

Ans. None whatever.

Qu. Did you make this contract with the company and acquire the stock and bonds under it by virtue of the fact that you were the largest stockholder and were therefore able to dictate such terms and conditions as you chose?

Ans. Not at all. There was no dictation at all. I conferred with the members of the directory and they approved of the contract. There was no solicitation or influence used.

215 Qu. What understanding had the directors with you and what considerations influenced them to make the contract with you?

Ans. The contract sets forth exactly what was understood all around. The directors, with one exception, were very anxious to have more road built. I knew, and I think some of the directors knew, that the road could not sustain itself unless extended. I had made such arrangements with the Iron Mountain railway as made me sure of my ability to extend the road as far as Nashville, in Howard county, as a standard-gauge road. We believed that with this accomplished it would be possible to go on and build it across the State. The members of the directory were fully advised of my understanding with the Iron Mountain Company. I think they believed in my ability to build the road, and therefore contracted with me. I believe they would have contracted with any outside party on the same terms. I have no doubt that as between myself and an outside party I would have had the preference.

Qu. Would you as a large stockholder have consented to such a contract with an outside party?

Ans. Yes; if I had not been able to build the road myself or seen a reasonable chance of being able to build it in the near future. I would have been glad to consent to such a contract with an out-

side party who would build it at once. The stock of the Washington and Hope railway at that time was, in my opinion, of no value. The stock in the extended road could hardly fail to have some value.

Qu. Then you say that this contract was one which a "*bona fide*" stockholder, one who had bought his stock and paid value for it, would have agreed to?

Ans. Yes; I do. All the parties consenting to it were "*bona fide*"
stockholders except Mr. Paul Beardsley, although the amount
216 they held was not large. My original contract with the Washington and Hope Railway Company shows this very plainly. The stockholders in that company had subscribed for their stock at its face and paid cash. They had graded and bridged the road. They had obtained a grant of land from the State. They then contracted with me, a total stranger, owning none of their stock, to finish their road. They gave me as a consideration for building the balance of it, not only the stock which would be created by the new construction, but the road-bed they had built, the land the State had given them, the stock for which they had previously paid, and in addition they undertook to pay me, upon completion of the work, ten thousand dollars in cash. That contract was very much more favorable to me by comparison than the contract with the Arkansas and Louisiana Railway Company. In the last contract the stockholders kept all of their stock, which they expected to have greatly increased in value. They gave only the securities which I practically created by building the road, and they saddled upon me as contractor their debts which they were unable to pay.

Qu. If Mr. Paul Beardsley had proposed it when you were about to make your construction contract with the Arkansas and Louisiana Railway Company would you have associated him with you as a party to it?

Ans. No; I would not.

Qu. Why not?

Ans. A good and sufficient reason would have been that he was unable to contribute anything towards carrying it out. There was, however, a stronger reason with me. I would not have gone into any arrangement that would have resulted in a partnership with him.

Qu. Would not the same reasons have prevented you from selling him such an interest, one-third, as he claims you did sell him when you agreed to sell him the stock in the Washington railway?

217 Ans. Yes; I would not then or at any time have sold him such an interest as would have created a partnership. I simply agreed to sell him $33,250 in stock.

Qu. Have you done business as a partner—that is, in partnership—before?

Ans. Yes; I have done business in partnership several times. I once did business in partnership with Mr. Paul Beardsley. The closing up of that business, however, was so unsatisfactory to me that I would not at any time since have been willing to have gone into a partnership with him.

Qu. When and where were you in partnership with him before?

Ans. I think it was in the years 1867 and 1868. It was in Virginia.

Qu. You said you began to make road-bed north of Washington about the 1st of August, 1882, working outside of the territory covered by the charter of the Washington and Hope Railway Company. Were you then building a road without any charter? If so, how did you obtain your right of way, under what style were you doing the work, how long did you continue to work this way, where did you get the money, how did you disburse it, and how much did you expend before you had a charter to cover the work?

Ans. Yes; I was then building a road without a charter. The land through which we were working belonged to friends to the enterprise, and they permitted us to work through and gave a right of way. The money expended was obtained from the Iron Mountain Railway Company under the agreement made with Mr. Hayes. It was disbursed to a very large extent under my personal supervision. The teams and labor were paid weekly at the office of Jett & Sims, at Washington, and generally in my presence. I kept my account with Mr. Carruth at that time, but a good deal of the money we used then did not pass through his books, but was taken
218 direct to Jett & Sims and there disbursed for labor, &c. This continued through August and September, until the charter of the Arkansas and Ind. Ter. Railway Company was perfected to extend over the route on which we were building. During this time I think I expended about fourteen thousand dollars.

Qu. Did Mr. Paul Beardsley continue with you; and, if so, in what way?

Ans. He came originally as stated and went to work for the company. After I took the road he continued with me in the same way.

Qu. Did you employ him at the same price?

Ans. At first no change was made in the price. I afterwards, about the 1st of December, 1883, advanced his salary to one hundred dollars per month, and about February 1st, 1885, he was furnished a dwelling rent free.

Qu. How long did he remain in your employment, and in what capacity?

Ans. Until February 15th, 1886. He acted as assistant superintendent and master of transportation. He did various kinds of work. In my absence he was in charge of the operating department of the road. He was never in charge of the accounting or financial department of the road.

Qu. How did you settle with and pay the Iron Mountain railway for the money advanced you to build the road?

Ans. I settled with the Iron Mountain Railway Company June 11th, 1885. I did not pay them. I left in the hands of Mr. R. S. Hayes as collateral two hundred and forty first mortgage bonds for one thousand dollars each, which had been paid me for construction. I agreed to pay them the net earnings of the road not needed for improvements on the road, but not less than twelve thousand dollars

per year. I am held personally responsible for the debt. A copy of my contract of settlement with the Iron Mountain Company I exhibit, marked A. It was considered necessary that the Arkansas and Louisiana Railway Company should be a party to this
219 contract, because the security of the debt depended on compliance with the condition that no more bonds should be certified on their part of the road until it was paid. To insure this the Arkansas and Louisiana Railway Company was made a party. The term J. D. Beardsley and associates has no reference whatever to Mr. Paul Beardsley. The word associator was used to cover the interests of which Mr. Geo. C. Smith was the representative and for whom he held an assignment of one-half of the construction contract, as shown on the back of Exhibit —. This contract with Iron Mountain railway also recites in brief the understanding had verbally with Mr. Hayes at the first.

Qu. How came you to make the assignment of this construction contract? State this fully.

Ans. Some time in July, 1883, Mr. Hayes telegraphed me to meet him at Hope. I went, and, after talking over the matters for which he had desired to see me, the conversation turned upon the road, and he finally said: "We think you could afford to give some of your stock." The proposition was entirely new to me, and, to get time to think of it, I said I would come to St. Louis and see him about it. He replied: "That will be all right; there is no hurry about it." This was all that was said about it at that time. Some time afterwards, in August, I went to St. Louis, and the subject was then discussed, and I consented that they should have half the stock of the road. I told Mr. Paul Beardsley of my first talk with Mr. Hays at Hope after I came back to Washington and before I went to St. Louis. He did not then show in any way to me that he considered himself a party in interest. After I came back from St. Louis I told him what I had done there, and he did not then say anything that led me to suppose he considered himself a party in interest. I have heard his deposition in regard to this matter. He is mistaken in his memory and in the remarks he attributes to Mr. Hayes.
220 I have related the matter exactly as it occurred. With an even division of the bulk of the stock the stock of the directors was an important factor. Mr Hayes asked me if I thought the directors would be willing to endorse their stock and deposit with the rest of the stock. I thought they would and they did so. Mr. Paul Beardsley came at my request to endorse the stock which I had put in his name. At that time, though all the stock was in my possession, I had not examined it carefully, and I was under the impression that only one certificate of twenty shares had been put in his name. That also was his impression. I was therefore quite surprised upon examining the stock since this suit has been commenced to find that there were four certificates of twenty shares each in his name that had never been endorsed. It is my impression that I only intended to have one certificate issued to him, and that five were issued to him instead through the secretary misunderstanding me. It was desired that this transfer to the Iron Mount-

ain Company should not be disclosed, and I think it was never generally known. I told it to Mr. Carruth, A. B. Williams, H. B. Holman, R. B. Williams, and perhaps one or two others.

Qu. Mr. Paul Beardsley says in his deposition that he and you kept an account against each other before December, 1883. Is that correct?

Ans. I think he is mistaken. I have never been more careful at any period of the life of the road to have an accurate and careful account of everything kept than during the period he mentions, nor was it ever more necessary. The Washington and Hope railway did not earn sufficient to afford to keep an auditor or even a bookkeeper. I always looked forward to the time when the road would be able to have an accountant, and I was very careful to try to get everything either on the books of Mr. Carruth or on the books of the only agent we had, who was at Washington, intending to after-
221 wards gather them into a set of books. During this time Mr. Paul Beardsley was in the habit of getting money from the agent and from Mr. Carruth also. I checked up the agent's books and Mr. Carruth's account every month. I found that Mr. Paul Beardsley overdrew his salary regularly. At the time I advanced his salary I think his overdraft was about four hundred dollars. Why or on what ground he should now consider that he was not on a salary at that time I am at a loss to understand. I was on a salary all of that time, and never took money without having a charge made of it. Almost immediately after I had advanced his salary and directed him not to draw any more money from the agent I found when I called for our balance at Mr. Carruth's that some of — was withheld to cover a deficiency of Mr. Paul Beardsley's account there. The amount was small, and it was allowed. It kept getting a little larger until in the latter part of December, 1884, when I directed Mr. Carruth to credit him on Jan. 1st with whatever it might take to balance his account and charge the road with it. I also told Mr. Carruth that after that he must collect any overdrafts Mr. Paul Beardsley should make with him. Mr. Paul Beardsley afterwards thanked me for the present.

Qu. You speak of two hundred and forty first-mortgage bonds left in the hands of Mr. R. S. Hays. How did they come to be in Mr. Hays' hands? Where did they come from?

Ans. Under the terms of the construction contract a portion of the road was examined and accepted and the proper certificates were made. Thereupon, in accordance with the provisions of the contract, the directors gave me an order on the trustee, the Mercantile Trust Company of New York, requiring them to certify and deliver to me the two hundred and forty first-mortgage bonds. I gave Mr. Hayes an order for these bonds on the Mercantile Trust Company, with the understanding then that they should be
222 held by him until a final settlement with the Iron Mountain. I file certified copies of affidavit of the president, resolution and order of the directors to the Mercantile Trust Company, and my order to Mr. Hayes. These are marked Exhibits B, C, and D.

Qu. Did you explain to Mr. Paul Beardsley at the time that you

agreed to sell him the stock that the Shelby county material belonged to you individually?

Ans. Yes; I explained to him fully that the road would owe me personally for it if he had that stock at that price. He understood the situation perfectly before. He had asked me previously whether I would in my settlement with Alderman charge the material at the cost when purchased or at its value when put into the road. I had told him I would charge it at what it was worth when put in the road. When I bought the material, in July, 1879, everything was very low; I think iron rails below thirty dollars per ton and other things in proportion. At the time I put this material into the Washington and Hope road iron rails of this weight were worth about eighty dollars per net ton in St. Louis and all other railway material had advanced in proportion. If Mr. Paul Beardsley had taken the stock and paid for it then the material would have been a debt at its value when put in. As the case stood, however, regarding the purchase by Mr. Paul Beardsley as abandoned, the interest of the other parties, the directors, was so small comparatively that I did not regard it material at what price I got credit for it or whether I had credit for it all, as it was very much like taking assets out of one pocket and putting them in the other.

However, when I assigned the interest in the construction contract it made a difference. I mentioned the matter to Mr. Hayes. He told me their interest would be entirely satisfied with whatever was equitable. I thought, in view of the liberality of the Iron
223 Mountain in all matters, that it would be wise to take credit on our (lessees') books for the material only at what was obtained for it as old material. The proceeds of all this old material went into the general business of the lessees. Several thousand dollars of it went direct to the St. Louis Bolt and Iron Company on account of the indebtedness of the Washington and Hope railway. To the best of my recollection the amount received for all the old material was from $11,000 to $12,000, which included about $5,000 for the material got from Tennessee by me.

Qu. Have you read the statements of Mr. Paul Beardsley made in his deposition as to the conversations between you and he prior to your written agreement to sell him the stock as to the interest he was to acquire by his purchase and the manner in which you were to be paid? If so, state whether his recollection is correct.

Ans. I have heard his statements read. He is mistaken. I am able to be positive for two reasons. While I was sincerely desirous to assist Mr. Paul Beardsley financially, if I should be able, I had not forgotten the difficulty which had arisen from our previous partnership. I would not then nor at any time since voluntarily have made a partnership with him, and I never intended this sale to be anything other than a stock transaction. This was in my mind also when I made the memorandum he exhibits. In regard to the payment, he told me he had a valuable mine with valuable machinery in it. He told me there was a small incumbrance on it, perhaps $1,000, in favor of a Mr. Drexler, who had been a former partner of his. I never heard of the note or claim he speaks of until a good

while later. My understanding was that this claim was $1,000 or $1,200. It would not, therefore, have paid for the stock. In a suit to recover this claim afterwards he was defeated.

Qu. You state that the Washington and Hope Railway Company did not pay you all your salary. How much of that salary remains unpaid?

224 Ans. My salary was $2,000 per year. I am quite positive that I did not draw over $1,500 in the two years; there would be $2,500 due yet.

Qu. You say you have, then, still $2,500 due you from the Washington and Hope railway. What two years do you cover with this deficiency?

Ans. During the two years I operated the Washington and Hope railway, ending with 1882. After I was constructing on my own account and as lessee the arrangement as to salary was suspended.

Qu. You heard what Paul Beardsley said about your using the money from the Baltimore and Ohio R. R. Company for your own purposes, and that you have never been charged with the $125 paid for collecting that. What do you say to that?

Ans. He is mistaken about that. The amount of the Baltimore and Ohio check was between $500 and $600, and the amount credited, some $433, is intended to be the balance after the $125 was deducted. The check was converted into money and the money went into the general business. The books of the agent at Washington showed the amount and the disposition of the money, but they were burned a couple of months before the auditor's books were opened. The amount, $433, was put in from memory. I think it correct, however; I am sure it is nearly correct. The additional $200 was paid to me personally by Mr. Spencer, vice-president of the Baltimore and Ohio Railroad Company, some time later. There were no costs on that, and, like the other, it was put into the funds of the road. The cost of bringing my family to Arkansas was small, probably less than $50. I had passes for myself. There were two adults and three children. I remember that I got a reduced rate from Parkersburg to St. Louis for them. From St. Louis the Iron Mountain granted me free transportation for all of them.

Qu. When Mr. Paul Beardsley went to New York in the fall of 1879 did he go in the interest of the Washington and Hope

225 railway or by your request?

Ans. No, sir; I met him at St. Louis on his way from California. I was glad to see him and invited him to come down to Arkansas and spend some time with me. He hesitated about it on account of being in a hurry to go to New York. He finally consented to go. I got him passes and he came with me to Washington, but I think he did not remain over one day.

Qu. How long would it have taken a one-third interest in the Washington and Hope road, if Paul had had it, to have paid the $8,000 after allowing him for the support of his family?

Ans. With the experience acquired since I can say it would never have done so.

Qu. Do you notice anything in Mr. Paul Beardsley's deposition you wish to correct?

Ans. He is mistaken in his memory of my letter to Mr. Alderman about the purchase. I did not say anything about going home Christmas and then arranging terms of payment. I simply said I would take his stock or investment if he would give me time to pay for it. There has never been any further arrangement or talk about the time since. He is in error in saying he went regularly to work after the purchase if he intends by that that he was not regularly at work before that. He is also mistaken in saying he took entire charge of the operating department of the road. He was never at any time in entire charge of it except temporarily, when I was absent, and there were well-defined limits to his authority then. He is mistaken in saying the entire business of the road was under his control in my absence. He never at any time had control of the financial or accounting business of the road. His memory is at fault when he says he was quite busy when I handed him the memorandum he exhibits. He was not engaged at that time.
226 He read it then before putting it in his pocket. He is also mistaken as to the date of the first contract with the Iron Mountain. There was no conversation or agreement at the time I agreed to sell him the stock that we should both devote our time and energy to the work of the company, nor was it agreed that he should pay his purchase out of the profits. We as a company or as two individuals never had any arrangement with the Little Rock Oil and Compress Company. Whatever arrangement existed with that company was personal between them and myself. Mr. Paul Beardsley had no connection with the matter in any way. In order that the account might be well kept I asked Mr. Wheeles, the auditor, to keep it, which he consented to do. I arranged with outside parties to buy the seed. Some time after the season closed and the matter had passed out of my mind Mr. Wheeless called my attention to a balance of the money on hand, and asked what was to be done with it. I told him to pass it to my credit at Mr. Carruth's, but it then occurred to me that as the money had gone through the auditor's books it might be considered by the Iron Mountain interest that it should not have gone to my personal credit. I asked Mr. Wheeless if he thought, in view of the other interest of which he was fully advised, it should go to my credit. After considering the matter he said there could be no reason at all for putting it in the general fund. I then told him to credit me with it. A little later I thought of Mr. Paul Beardsley, and thought it would be a nice thing to give him a part. The manner of dividing it had no reference to any interest of his in the road, which I did not then suspect. It was intended as a pure gratuity. As we were short of money then I instructed Mr. Wheeless not to make the entries at that time, and they were not made until later. It was several days, and I think some weeks, later than this before Mr. Paul Beardsley knew anything about it. Mr. Paul Beardsley has forgotton about seeing
227 the balance-sheets, I presume. I have shown him several of them in addition to the one he saw with Mr. Wheeless. In

the schedule of lands which he claims as belonging to Ark. & La. Railway Co. are lands that belonged to me before he came to Arkansas. The statement of the net earnings of the Washington and Hope railway are entirely incorrect. Up to the sale of the road the earnings did not exceed about $1,200 per year, and it can easily be shown that the operating expenses, salaries, and contingent expenses amounted fully to that sum or more.

I have read over carefully the letters attached to plaintiff's deposition, and I don't find anything there that tends to make me think my memory is at *de*fault in the statements here made. When he was going to New York he stated that he had no doubt that he could obtain all the money that would be needed for extension. I told him I would be glad if he could. While he was there several letters passed in reference to getting money there, which he represented he was negotiating for. Soon after that I received a letter from him saying he could not accomplish anything in connection with his business in New York, and asking him to give me a place on the road. I wrote him a general reply to this letter, and in it I told him that our earnings were so small that I did not feel that we could afford to employ him, and told him I thought he could do better in New York. To this letter he replied that he could not do anything at present in New York; that he had his family on his hands; that he thought he could be worth $75 per month, and urged me to employ him at that price. My letter of Oct. 24th, which he exhibits, was my reply to this. It is very apparent that the term "we," as used in these letters in reference to the extension of future operations of the road, could not in any sense have applied to him, as he had at that time not bargained to purchase, and one-half of the stock was then owned by Mr. Alderman. I have no memory of it, what was in his letter that mine of Oct. 24th, 1881, was a reply to, which led to the remark about the purchase of Mr. Alder-
228 man's stock. In writing letters and in speaking of business I habitually use the word we instead of I. Both Mr. Wheless, our auditor, and Mr. Carruth, our treasurer, could establish from my letters to them a stronger basis upon which to claim a community of interest than is shown by these letters of 1881. It is my conviction from an examination of the mutilated letter of Oct. 8th, 1881, exhibited by the plaintiff, that it is the last letter I wrote to him in New York before that of Oct. 24th, 1881. In this letter of Oct. 8th, 1881, as I think, I declined to employ him on the road for the reasons before given. I think that part of the letter which is missing contained my advice to him that we could not employ him and the reasons therefor. Referring to the letter of February 7th, 1886, I notice that in writing that I fell into some inaccuracies as to dates and amounts. The matter had not then been recalled to my mind for years. I wrote with no suspicion of what has happened since, and did not stop to get data or to think carefully. I was in error in saying that Mr. Alderman began to offer me his stock subsequent to Mr. Paul Beardsley's arrival, when, in point of fact, he began to offer it eight or ten months before. I was wrong in consequence as to the time of my purchase of the stock and of my agreement to

sell the plaintiff. I was led to use the term "two-thirds of the purchase from Mr. Alderman" from his use of the same form in his letter to which this was a reply, and also from a general memory that the stock bargained to him was about two-thirds bought of Mr. Alderman. I was led in the same way to put the amount $33,333.33 in stock from overlooking at the moment of writing that I had not held the whole $100,000, and remembering in a general way that the amount I had agreed to sell him was about one-third of what I held at the time.

Qu. Did you have a correspondence with the plaintiff in regard to his claim which embraced other letters besides your letter
229 of February, 1886, to him, which is exhibited with his deposition? If so, file the same as exhibits with this deposition.

Ans. There were additional letters. I exhibit them with my deposition, marked F and G. That part which refers to the matter in dispute is marked with red ink. The letter exhibited by the plaintiff of Feb. 7th, 1886, is the answer to that here exhibited, marked G.

Qu. Have you heard the depositions of Geo. Rector, J. G. Yowell, and John Bell in reference to your having told them that Paul Beardsley had an interest; that you had sold him an interest or given it to him, &c., &c.?

Ans. Yes; I have heard these depositions. I was never on intimate terms with any one of these men. I have no memory of ever referring to anything of the kind in any conversation ever had. If any reference was ever made to anything of the kind it was some reference to my agreement to sell in 1881. Mess. Rector and Yowell are partners in business. All three of these men are personal enemies of mine, and have been so for over two years.

Cross-examination:

Q. What amount did you pay for the old iron, fish-plates, &c., bought by you from Shelby county, Tennessee, and put in the Washington and Hope railway?

Ans. As I remember I paid ten dollars per ton in the track and removed them at my own expense from Brownsville, Tenn. I was also at the expense of taking them up out of the track and bringing them to the line of the Louisville and Nashville road.

Q. Is it not true that you paid $2,000 for the purchase and removal of that material, and that the books kept by Carruth, the treasurer, show in the aggregate that amount?

230 Ans. No; one of the entries referred to is $700 and is of date Dec. 19th, 1879. No part of this money went to pay for the material bought from Shelby county. The second entry of $350, sight exchange on St. Louis, was not, I think, used for that purpose either. The item on the treasurer's books of $750, to pay on engine in Little Rock, was probably used in part to pay for the overhauling of the engine in the Little Rock shop. Their bill was not so large as that. My memory is that it was $615. In regard to the entry of April 30th, 1880, no part of that money went to pay for material from Shelby county.

Q. For what was the first item of $700 and the last item of $200 mentioned in your last answer paid?

Ans. The $700 I took with me when I went home at that time. I went through Memphis, expecting to take up the material, but did not do it, and went on home. I think I brought the money back with me to Washington, Ark. The last item of $200 was sent to pay a note in favor of Taylor & Carroll, in Memphis. This is my recollection, and I am quite sure I am correct.

Q. Can you approximate the total cost of the material mentioned to you laid down in Washington?

Ans. I think the actual cost of the material at Washington to me was between $2,500 and $3,000. I would like to state that I testify as to these things from memory of transactions which took place six or seven years ago, but believe that I am substantially correct.

Q. On the books kept by Mr. Carruth, the treasurer, I find an item in the account of J. D. Beardsley wherein he is charged on Nov. 16th, 1882, to cash paid Powers, $271.16, and on January 5th, 1883, to cash paid Thomas Essex, Mitchell land, $307.85. Are those the lands that you mentioned in your deposition as having been bought by you before Mr. Paul Beardsley came into the road?

231 Ans. Without referring to the entry of Nov. 16th, 1882, of $271.15, I am unable to say what lands this was paid on, as we bought several tracts of land from the Iron Mountain, whose agent Mr. Powers was. In reference to the last item of January 5th, 1883, of $307.85, I think that that was a final payment on some lands I did buy before Mr. Paul Beardsley came into the road.

Q. Do you know if anything more was paid for those lands; if so, how much?

Ans. Yes, sir; I know there was more, but I can't tell how much.

Q. When were those lands bought, Major—that is, when were the lands that you claimed to have bought before Mr. Paul Beardsley came into the road?

Ans. These lands were bought from the Iron Mountain by Charles Mitchell. I do not know at what time he bought them. I took the purchase off his hands before Mr. Paul Beardsley came to the road. I paid him what he paid on account of them, and it is my memory that I paid one cash payment in addition before those final payments.

Q. Were they not bought while Alderman owned an interest in the Washington and Hope railway, and for the benefit of you and Alderman?

Ans. I am not able to give the date at which the purchase was made from Mitchell, but I think it was during the construction of the road. If Mr. Alderman in his settlement had desired to have been a party to the purchase I would have been willing.

Q. Were they not paid for out of moneys arising from the sale of property or operating the Washington and Hope railway or its successor or successors?

Ans. I am not able to say in regard to first payments, but I think they were made before we began to operate the Washington and Hope railway. The final payment was probably from funds ob-

tained from the Iron Mountain for construction purposes, directly or indirectly—I mean that it was probably either directly or indirectly from that source.

232 Q. Did not the funds that were paid for these lands come from the same source or sources that were used in the construction of the railway?

Ans. I think that directly or indirectly the latter payment did. I notice that the amount charged for the final payment is charged in the account of J. D. Beardsley proper, and it is possible and probable that that particular money was earned by the road, but a large sum of money which I borrowed directly from the Iron Mountain railway for construction had previously been credited to that *amount* in which at that time the earnings of the Arkansas and Indian Territory were kept. Considerable sums of this money, which I had borrowed for construction purposes and which was credited in that account, was diverted to pay the debts of the Washington and Hope railway. As the Arkansas and Indian Territory Railroad Company had assumed these debts and were unable from their earnings to pay them, it would follow that — $307.85 was paid out of the actual earnings of the road at the time it was in consequence of my having paid other debts of theirs with construction money borrowed by me.

Q. Upon what kind of security was the construction fund that you have just mentioned as borrowed from the Iron Mountain based?

Ans. I don't think they had any security at first. My memory is that the first payment they got was $50,000 in the bonds of the Arkansas and Indian Territory Railroad Company. Some time after we made our contract I voluntarily took the old Washington and Hope stock and offered to leave it as security for advances. Captain Hayes, first vice president, said he considered it worthless, but I did leave it with Mr. Geo. Smith, ass't sec. of the Iron Mountain road. He was also private secretary of Mr. Hayes. I left it after Hayes said he did not want it, and I have no reason to believe that Hayes ever knew that it was left there.

233 Q. Did you not have a written contract with Captain Hayes relating to the loan of the construction fund that you have mentioned?

Ans. I did not. Captain Hayes told me verbally, on his car en route between *route between* Malvern and Texarkana, that he would let me have the money necessary for construction. I had a written contract with the Iron Mountain road in reference to iron, which, however, was cancelled by a verbal agreement, and was never carried into effect.

Q. In your examination-in-chief you testify in regard to the contents of the first written contract you had with Captain Hayes or the Iron Mountain road. Was not that contract in writing? Were you not asked to produce the original or a copy of it; if so, why have you not produced it?

Ans. It was in writing, and is the contract to which I referred in my previous answer. I believe that I never was asked to produce a

copy of it. I don't think I was ever asked to produce the original until here this morning. I was asked at Washington by Mr. Paul Beardsley to show him the contract. I had previously had Mr. Wheeless, our auditor, search through the safe and our papers for the contract. He failed to find it. I have myself made two careful searches, not only through our papers at the office, but also at my residence, and I am unable to find it. For the information of the plaintiff I have telegraphed to the Missouri Pacific attorney requesting *them* to send at once to the attorney of the plaintiff a certified copy of that contract. This is the contract that was verbally annulled between myself and Captain Hayes.

Q. Recurring to the money furnished to purchase the lands referred to as having been bought by you before Paul Beardsley came into the road, is it not true that the first payments made came from the same source that moneys did used in the construction of the Washington and Hope railway?

Ans. Necessarily so, as I was furnishing my private funds
234 for the Washington and Hope railway.

Q. Wasn't Alderman also furnished money to build the railway, and did not the citizens of Washington also furnish money to aid in building it, and did not the money used in purchasing these lands come out of these funds?

Ans. Alderman was sending me money which I understood from him that he charged to me personally pending a final settlement. The citizens of Washington, I understand, had expended something over $11,000 on the road-bed before I came to Washington, but they never furnished any money to assist in the construction after I came. I received money from West Virginia and sometimes brought it myself. Without any actual knowledge of the exact date of the purchase I am unable to say out of which fund the payments were made. I hardly know that fund is the proper term to use. There were no two funds kept. The money sent to me by Alderman was charged to me; it was paid out of the money I had in hand.

Q. Were not these amounts furnished by Alderman and used by you in the manner above indicated and to be accounted for in a settlement between you and Alderman when the road was completed? Answer yes or no.

Ans. In order to answer that question yes or no it is necessary that you explain what amounts you mean and what you mean by the term "above indicated."

Q. Were not the money, iron, material, &c., furnished by the St. Louis, Iron Mountain and Southern railway to aid in constructing the road from Hope to Nashville based upon the credit of the railway operated by you? Answer yes or no.

Ans. I believe they were not.

Q. Were not the bonds and stock of said railway hypothecated as collateral security for the money and material furnished? Answer yes or no.

235 Ans. The bonds were not hypothecated, nor was there any provision in our contract or understanding for any hypothecation of bonds or stock. I afterwards of my own motion took the

stock of the Washington and Hope railroad belonging to me and offered to deposit it as security. Captain Hayes declined to receive it, saying that he considered it as worthless. I left it, however, in the outer office with Mr. George C. Smith, his secretary.

Q. Has not the St. Louis, Iron Mountain and Southern Railway Company all of the duly issued and certified bonds of the Arkansas and Louisiana Railway Company as collateral security for money and material furnished by it to aid in the construction and equipment of the Arkansas and Louisiana Railway Company? Answer yes or no.

Ans. Yes.

Redirect:

Q. You state in next to the last question asked you on cross-examination that bonds and stock were not hypothecated to procure the money for construction of a road to Nashville, and in the next answer you say that the bonds are now held by the St. L., I. M. & S. R'y as collateral security for money advanced you for construction. Please explain these answers.

Ans. I understand the question of the attorney for the plaintiff first referred to to refer to a hypothecation for the purpose of obtaining the money before or during the time it was being furnished. I answered on that understanding. A good while after all the money had been furnished we had a settlement with the St. L., I. M. & S. R'y Co., or, to be more definite, with Captain Hayes, and it was then agreed that the two hundred and forty first-mortgage bonds which had been paid to me by the Ark. & La. Co. remain in the keeping of S. R. Hayes, first vice-president, until full payment of the debt. That settlement was made on June 11th, 1885, and the contract then made fully sets forth the conditions of it. It is

236 Exhibit A with my deposition.

Q. If you wish to make any explanation in regard to the exhibit attached to the deposition of W. H. Wheeless, marked Exhibit No. 10, you can do so in answer to this question.

Ans. Explaining Exhibit No. 10 attached to deposition of Mr. Wheeless, which I understand to be a copy of the account of the St. Louis, Iron Mountain and Southern Railway Company against us for advances made under my agreement with Mr. Hayes, I have to say I made the agreement as stated in my deposition, and under it I obtained the money in part first and some time later the material. I mean that I began to get the money before I began to get the rails, &c. At the time this money began to be obtained—that is, about August 1st, 1882—the Arkansas and Louisiana Railway Company was not in existence, nor until some months later. I never had any talk with Mr. Warner, auditor, about the account and do not know why he headed it the Ark. and La. Railway Company. I noticed the error at the time it was rendered, but did not regard it as of any consequence, as the amounts were correct. I presume the auditor, knowing the name of the road we were building and having no special instructions, naturally headed his account in that way. I attach hereto the certified copies of the vouchers on which I drew

the money that is charged in the account—these vouchers, twenty-nine in number, with the letter of Mr. C. G. Warner, auditor of the St. Louis, Iron Mountain and Southern railway—marked Exhibit R, and make the same a part of my deposition.

J. D. BEARDSLEY.

237 EXHIBIT A TO J. D. BEARDSLEY'S TESTIMONY.

Memorandum of a contract made and entered into in duplicate at St. Louis, Mo., this 11th day of June, A. D. 1885, by and between J. D. Beardsley and associates, contractors for the construction of the Arkansas and Louisiana railway of Arkansas and lessees of said railway, and the Arkansas and Louisiana Railway Company, a corporation created and existing under the laws of the State of Arkansas, parties of the first part, and the St. Louis, Iron Mountain and Southern Railway Company, a consolidated corporation existing under the laws of the States of Missouri and Arkansas, party of the second part, witnesseth:

Whereas said party of the second part has furnished money and materials to aid in the construction and equipment of said Arkansas and Louisiana railway, for which money and materials it was agreed that said party of the second part should be paid by delivery of the first-mortgage bonds of said Arkansas and Louisiana Railway Co., which bonds run thirty years from their date, bear interest at the rate of five per centum per annum, and are authorized to an amount not exceeding fifteen thousand dollars per mile, and are secured by a first mortgage on the Arkansas and Louisiana railway and all franchises and property appurtenant thereto, which bonds were to be delivered and received in payment for said advances by said party of the second part at the rate of eighty per centum of their par value;

And whereas on the second day of July, A. D. 1883, said Arkansas and Louisiana Railway Company executed and delivered to the Mercantile Trust Company of New York as trustee a first mortgage or deed of trust to secure payment of bonds upon the Arkansas and Louisiana railroad as aforesaid, and up to this date there have been certified by said Mercantile Trust Company, trustee as aforesaid, two hundred and forty of said bonds of the denomination of one
238 thousand dollars each and numbered consecutively from one to two hundred and forty, inclusive, and no more, and said two hundred and forty bonds have been heretofore delivered on the order of said J. D. Beardsley to R. S. Hayes, first vice-president of the St. Louis, Iron Mountain and Southern Railway Company, said party of the second part;

And whereas it has been and is hereby mutually agreed that payment of whatever sum may be due said St. Louis, Iron Mountain and Southern Railway Company from said J. D. Beardsley and associates and said Arkansas and Louisiana Railway Company for materials and supplies furnished as aforesaid shall be made in lawful money and not in the first-mortgage bonds of the Arkansas and Louisiana Rail-

way Company at the rate of eighty per centum of their par value as aforesaid;

And whereas the parties hereto have this day made a settlement of all claims and demands existing on behalf of each against the other, and said J. D. Beardsley and associates acknowledge themselves and the said Arkansas and Louisiana Railway Company acknowledges itself, with said J. D. Beardsley and associates, to be jointly and severally justly indebted unto said St. Louis, Iron Mountain and Southern Railway Company in the full sum of one hundred and nineteen thousand six hundred and nine $\frac{57}{100}$ dollars ($119,609.57), now due and payable, for advances of money and for materials and supplies, all of which said money, materials, and supplies have been faithfully applied and have gone into the construction and equipment of said Arkansas and Louisiana railway, for the payment of which sum, with interest at the rate of six per centum per annum from the 1st day of July, A. D. 1885, said parties of the first part do hereby jointly and severally obligate themselves, and as security for said payment it is hereby declared that said St. Louis, Iron Mountain and Southern Railway Company is justly entitled to an equitable lien upon said Arkansas and Louisiana railway:

239 In consideration of the premises and of the covenants and agreements hereinafter set forth by the St. Louis, Iron Mountain and Southern Railway Company said J. D. Beardsley and associates and said Arkansas and Louisiana Railway Company, parties of the first part hereto, do hereby waive and relinquish all claims and demands and rights which have accrued or which might hereafter accrue under and by virtue of any and all contracts and agreements, verbal or written, heretofore entered into by said J. D. Beardsley, J. B. Beardsley, and associates or said Arkansas and Louisiana Railway Company with said St. Louis, Iron Mountain and Southern Railway Company or any of its representatives, and so far as the same are in any respect in conflict herewith said contract shall be taken to be annulled and for naught held and determined. Said parties of the first part hereby agree that the two hundred and forty first-mortgage bonds now in the custody of R. S. Hayes, first vice-president of said St. Louis, Iron Mountain and Southern Railway Company, shall remain in said custody until said debt of $119,609.57, with interest as aforesaid, due said St. Louis, Iron Mountain and Southern Railway Company shall be fully paid and discharged, and until said debt is fully paid said bonds shall constitute a lien upon said Arkansas and Louisiana railway in favor of said St. Louis, Iron Mountain and Southern Railway Company solely and in favor of no other person or persons, it being the intention of this agreement that the equitable lien of said St. Louis, Iron Mountain and Southern Railway Company upon said Arkansas and Louisiana railway for the repayment of the debt due, as hereinbefore recited, shall constitute a lien prior and superior to that created by the mortgage of July 2nd, 1883, and superior to all other liens upon the present line of constructed road of the Arkansas and Louisiana Railway Company.

In consideration whereof said party of the second part agrees to

forbear present demand for the payment of the debt, as here-
240 inbefore recited, and it is agreed that for the purpose of paying and discharging said indebtedness said parties of the first part, each and all of them, shall continue to operate said Arkansas and Louisiana railway with all reasonable and possible economy, and, after paying all actual and necessary expenses of maintaining and operating said railway, the necessary improvements of the present line, and such other outlays as are proper and necessary in connection with the use and operation of such railway, all surplus and remaining earnings and revenue arising from the present line of road from Hope to Nashville shall be paid into the treasury of said party of the second part on account of the aforesaid indebtedness of said parties of the first part, and until said indebtedness and interest that may accrue thereon shall be fully paid and discharged no part of the surplus earnings of the Arkansas and Louisiana railway shall be diverted for the purpose of undertaking or constructing any new work or for any other purpose unless by agreement in writing of all parties hereto. Said parties of the first part hereby agree to keep true and correct accounts of all receipts and expenditures from and by reason of the operation of said Arkansas and Louisiana railway, and at all times the books and accounts of said parties of the first part shall be open to the inspection of said party of the second part, by its proper officer or agent, for the purpose of verifying any exhibit or statement as to actual net earnings. Said parties of the first part agree to pay said party of the second part, from and after the 1st day of January, 1886, not less than twelve thousand dollars ($12,000) per annum in reduction and towards discharge of the indebtedness hereinbefore recited, and in case of a failure to pay annually at least said sum it shall be the right and privilege of said party of the second part to make public sale at auction of so many of said first-mortgage bonds as remain in the custody of R. S. Hayes, first vice-president as aforesaid, as, in addi-
241 tion to payments made by said parties of the first part, will make the full amount of $12,000 annually due and payable to said St. Louis, Iron Mountain and Southern Railway Company as aforesaid, and the proceeds of said sale shall be accordingly paid into the treasury of said St. Louis, Iron Mountain and Southern Railway Company to the credit of said parties of the first part upon the debt hereinbefore recited. Said sale shall be made upon sixty days' notice of date, hour, and place to said parties of the first part, and said party of the second part or its legal representatives shall have the right to bid for purchase of bonds at any and all said sales.

It is mutually agreed that no more bonds upon the present line of road from Hope to Nashville shall be certified or delivered by the trustee under the mortgage of said Arkansas and Louisiana Railway Company to Mercantile Trust Company, of date July 2, 1883, and said trustee shall be furnished with a copy of this agreement, and shall be instructed by said Arkansas and Louisiana Railway Company not to certify any further or additional issue of bonds on the present constructed line of road between Hope and Nashville; but

when said debt due said party of the second part has been fully paid and discharged the two hundred and forty bonds now issued and outstanding and in the custody of R. S. Hayes, first vice-president as aforesaid, excepting any that may have been sold under the provisions of this contract, shall be the property of said J. D. Beardsley and associates, and shall be subject to his or their order, and the Mercantile Trust Company or its successors in the trust, as hereinbefore recited, shall be notified by said St. Louis, Iron Mountain and Southern Railway Company of the full payment and discharge of the debt aforesaid, and thereupon shall be at liberty to certify further bonds under said deed of trust as if this agreement had never been made.

It has been and is the desire of all parties hereto the said Arkansas and Louisiana railway shall be extended to some desirable
242 connection or terminal point in Louisiana, and it is hereby agreed that if party of second part shall not consider it advisable to assist parties of the first part by advancing money for that purpose, then said parties of the first part will be free to negotiate wherever they can for assistance, and in any negotiation which they may attempt they are promised the good will of said party of the second part; but none of the income of the present constructed line of road from Hope to Nashville, Ark., shall be used for building or maintaining said extension.

For the transfer of freight and the transaction of business between said Arkansas and Louisiana railway and the St. Louis, Iron Mountain and Southern railway it is provided as follows: The transfer of freight and business shall be at the point of crossing or the intersection of the two roads. Settlements and payments of the amounts due on transfer of business shall be paid monthly, as has been the custom in the past. Each party may maintain its own agency at point of transfer or joint agency may be established and maintained by mutual agreement upon such terms as may be deemed equitable. Through traffic rates between St. Louis, Carondelet, Columbus, Cairo, and Belmont and all points on the Arkansas and Louisiana railway will be maintained, subject, however, to such changes as may be agreed upon. The divisions on these through rates will be twenty-five per cent. to the Arkansas and Louisiana Railway Company and seventy-five per cent. to the St. Louis, Iron Mountain and Southern Railway Company. No specials will be granted by either party over the road of the other without their consent first obtained. The party of the second part undertakes to protect party of first part as far as in its power from competing points or lines, such as Fort Smith, Hot Springs, Hood's Landing, and Paris, Texas, by granting as low rates as are given by it to any competing point or line. Said party of second part will allow said parties of the first part to have necessary work done in their shops, charging them therefor same rate
243 as are charged their own lines. Said party of second part will also transport for said parties of first part all supplies and materials for their use at rates not exceeding those now charged and as favorable as are granted to the other roads which are a part of the Missouri Pacific system; this freight contract to be in force and

effect until one year after the full payment of the debt due to party of second part, as hereinbefore provided. It may be continued by mutual consent or terminated at any time after one year after payment as aforesaid by either party hereto giving six months' notice to the other.

In witness whereof said J. D. Beardsley, for himself and associates, of the first part, has hereto set his hand, and the Arkansas and Louisiana Railroad Company, also of the first part, has caused these presents to be subscribed in its corporate name by its president and its corporate seal to be hereto affixed, attested by its secretary, and the St. Louis, Iron Mountain and Southern Railway Company, of the second part, hath done the like by its first vice president and secretary, this 11th day of June, A. D. 1885.

J. D. BEARDSLEY.
ARKANSAS AND LOUISIANA RAILWAY COMPANY,
By W. H. CARRUTH, *President.*
Attest: R. B. WILLIAMS, *Secretary.*
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By R. S. HAYES, *First Vice-President.*
Attest: STEPHEN D. BARLOW, *Assistant Secretary.*

244 EXHIBIT B.

STATE OF ARKANSAS, }
County of Hempstead. }

I, W. H. Carruth, having been duly sworn, on my oath do certify that I am the president of the Arkansas and Louisiana Railway Company; that I have inspected the line of railroad of said company now constructed and in operation; that said line of railroad is fully sixteen miles long and extends from Hope station, on the main line of the St. Louis, Iron Mountain and Southern Railway Co., in a northwesterly direction, in the county of Hempstead, to and beyond Ozan, in said county; that said line of railroad has been properly constructed and is in good condition and ready for use for the distance aforesaid.

W. H. CARRUTH.

[SEAL.] Sworn to and subscribed before me, John E. Williams, acting and duly commissioned notary public within and for the county and State aforesaid, at Washington, Ark., on the 31st day of January, 1884.

JNO. E. WILLIAMS,
Notary Public.

NEW YORK, *June 22nd*, 1886.

It is hereby certified that the above is a true copy of an original certificate of W. H. Carruth, president, of the construction of six-

teen (16) miles of the railway of the Arkansas and Louisiana Railway Company in the possession of this company.

THE MERCANTILE TRUST COMPANY.
[SEAL.] H. C. DEMING, *Secretary.*

245 EXHIBIT C.

Office of the Arkansas and Louisiana Railway Co.

WASHINGTON, ARK., *February 2nd*, 1884.

At a meeting of the board of directors of the Arkansas and Louisiana Railway Company, held, pursuant to the call of the president of said company, at the place and upon the date above mentioned, the following resolution was adopted:

"Whereas under and by virtue of the terms of a certain mortgage or deed of trust of the date of July 2, 1883, executed and delivered by this company to the Mercantile Trust Company of New York City, it is provided that bonds shall be issued and delivered at not exceeding the rate of fifteen thousand dollars per mile for every mile of the railway of the company which has been actually constructed and ready to be put in operation as sections of five miles or more are completed upon filing with said trustee a certificate, under oath of the president, vice-president, or chief engineer of this company, to the effect that so much of the railway of the company has been properly constructed and completed and is in good condition and repair and ready for use; and whereas said sworn certificate has been made by the party or parties aforesaid, and will with this resolution be delivered to the said Mercantile Trust Company, showing sixteen miles of the railway of this company to have been properly constructed and completed and in good condition and repair and ready for use:

Be it therefore resolved, That the Arkansas and Louisiana Railway Company, through its board of directors now assembled, hereby requests, authorizes, and directs the said Mercantile Trust Company to certify, issue, and deliver to J. D. Beardsley or his order two hundred and forty (240) of the said bonds, numbered consecutively from one to two hundred and forty, inclusive, under said deed of trust for the purpose of discharging certain obligations of this company
246 to said J. D. Beardsley for the construction of said sixteen miles of road under a contract made and executed between him and this company on the 22nd day of May, 1883, for the purpose of constructing and completing the said railway of this company."

I, R. B. Williams, secretary of the Arkansas and Louisiana Railway Company, do hereby certify that the foregoing resolution was unanimously adopted by the board of directors of the Arkansas and Louisiana Railway Company on the above date, and that the same is truly, correctly, and completely copied from the proceedings of

said board of directors as the same appear upon the records of said company.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the corporate seal of said company, at its office, in the town of Washington, the day and year first above written.

R. B. WILLIAMS,
Sec. Ark. and La. R'y Co.

NEW YORK, *June 22nd*, 1886.

It is hereby certified that the above is a true copy of a resolution furnished this company authorizing the certification and delivery of two hundred and forty bonds of the Arkansas and Louisiana Railway Company.

THE MERCANTILE TRUST COMPANY.
[SEAL.] H. C. DEMING, *Secretary.*

247 EXHIBIT "D."

WASHINGTON, ARKANSAS, *February 7th*, 1884.

Please deliver certified the two hundred and forty bonds authorized and directed by the foregoing resolution, aggregating two hundred and forty thousand dollars, to Captain R. S. Hayes, vice-president Mo. Pa. R'y Co., or to his order.

J. D. BEARDSLEY.

Witness:
H. H. WHEELESS.

To the Mercantile Trust Company, New York city, N. Y.

NEW YORK, *June 22nd*, 1886.

It is hereby certified that the above is a true copy of an original order in possession of this company for the delivery of two hundred and forty bonds of the Arkansas and Louisiana Railway Company.

THE MERCANTILE TRUST COMPANY.
[SEAL.] H. C. DEMING, *Secretary.*

248 EXHIBIT F.

J. D. Beardsley, lessee and gen. manager; W. H. Carruth, treasurer; P. F. Beardsley, master of transportation; H. H. Wheless, auditor.

OFFICE OF MASTER OF TRANSPORTATION,
NASHVILLE, ARK., *January* 16, 1886.

DEAR MAJOR: Al. has handed me your letter of yesterday, which I have read and considered very carefully. It contains several assertions which I think are not correctly stated or which do not correspond with my understanding of what our business relations were

at that time. Before going into these, however, I will take up a clause further on in your letter in which you say: "I think you are mistaken in the opinion that these goods were paid for by money furnished by your father. I am not positive as to the carpet, but I feel quite certain you are at fault as to every other item in the account."

Now, these words can hardly be misunderstood, and the only interpretation that I can put on them amounts to about this: That she has made up an account against you aggregating something like $55 or $60, and that lacking any good or reasonable foundation upon which to base it. You think she has made a statement as to the money coming from her father, which is unwarranted by the facts, and, after excepting the carpet, you say you are quite certain she is at fault as to every other item in the account. Now, the facts are about as follows: When I bought the set of furniture which we used in the Phillips House with other things I bought the four chairs for you; also one set of bed springs at your request. The chairs cost $2 each and the springs $5. The whole bill amounted to $112, and for which I gave my note at ninety days.

About two weeks or so after this Mr. Young sent Al. a check, payable to her order, for an amount between one and two hundred dollars; exactly what I do not remember. At about the expiration of thirty days Mimms met me at Hope and, saying they were
249 very much in need of money, asked me if I did not want to discount the note, and finally offered to take off $2 per month or about $8 if I would cash it, which I did, using $104 of Al.'s money to pay it with. Later, when the carpet was first talked of, I made some objection on the ground that money could not well be spared then, when she said she supposed she could buy it with her own money, which she did. This disposes of every item of the account except the shades, which were purchased by you in St. Louis, and, together with two granite saucepans and perhaps a tin coffee pot, cost about $18, which amount you charged to me on the books at the depot after your return. Shortly after you moved from West Va. you asked me to get you another set of springs in Hope, which I did and which I paid for at the time, and this last was the set that was exchanged for the table which you sold me for $5. Now, about one and a half years ago you came to our house and at our table, in my presence, accused Al. of writing an insulting letter to Susie. I felt at the time very much hurt at your course, but not then — what had called the letter out, and being unwilling to say anything that would interfere with our then pleasant relations, I refrained from taking any part in the conversation or saying anything that might have hurt your feelings quite as much as you had hurt mine. It transpired, however, that the letter complained of was neither more nor less than a plain statement of facts written in reply to one she had received the day previous from Susie and which at that time you had not seen. Had you thought the account unjust and one that you ought not to pay you could quite as easily have said that in closing up old accounts, when we adopted the system of monthly payments and fixed salaries, you had considered

this account settled, and would therefore decline it. The explanation would have been much more satisfactory. On the other hand, you admit the justness of the claim by allowing and paying it, but resort to a letter of explanation, which was entirely uncalled for and which throughout exhibits a spirit in itself mean, contemptible, and unjust, as well as asserting towards me a condition
250 of our business affairs which did not at that time exist.

Referring to the book-case the statement that I presented it to Susie when at your house in West Va. is not correct. I gave the book-case to Al. before we had our settlement in Virginia, in 1868, and for that reason it was reserved from sale at that time. The idea of presenting it to Susie or any one else never entered my head, and as I always regarded it as belonging exclusively to her I don't see how I could give it away if I ever entertained such a thought. As proof that you considered — as belonging to us you can hardly fail to remember that, when in taking it out of the car in which it came from West Va., you suggested that it be sent to our house, and that I replied that we did not need it at present, and that you had better keep it until we wanted it.

There is much more that I would say in connection with your letter bearing more directly on our business relations, but the length to which this letter has now run will hardly permit it. I think, however, with all good feeling and brotherly love for you and Susie, that it would be well for us to have a more definite understanding as to our business relations and standing in the road. I would suggest that some time in the near future when you have the time to spare we take this matter up and arrange it.

I am of the opinion if our standing and business relations were entirely understood by Susie, which I infer it is not, much of the misunderstanding which has occurred might have been avoided.

With much love for you and all,

I remain affectionately, P. F. BEARDSLEY.

251 EXHIBIT G.

J. D. Beardsley, lessee and gen. manager; W. H. Carruth, treasurer; P. F. Beardsley, master of transportation; H. H. Wheless, auditor.

OFFICE OF MASTER OF TRANSPORTATION,
NASHVILLE, ARK., *Feb.* 1, 1886.

DEAR MAJOR: I have yours of 17th. I had intended to answer it very fully long before this, but my time has been so thoroughly taken up with other things that it has been impossible for me to do so. Were it not that some parts of my former letter demand a further explanation I would be disposed, in the interest of harmony and good feeling, to let the matter rest where it is. It is due you, however, that I should either substantiate or retract the statement I made that your letter to Al. stated in regard to me something that

was incorrect. You say: "At the time these transactions occurred Paul was working for the road at a salary of $75 per month, and that I overdrew my salary considerably, sometimes as much as $50 per month."

Now, it is true that I came here in Nov. of 1881 and agreed to work for $75 until such time as I could do better. I stated to you, however, before coming that I thought I could hardly live on a salary of $75, but that I would try it until we could make a more permanent arrangement or until I could do better in some other business. Soon after I came the agreement was made to purchase Alderman's interest and to let me have two-thirds of it, equal to a third in all the property of the company. In the following month of December you completed the purchase from Alderman, to date from January 1st, 1882. Now, while I realized that the company was quite heavily in debt in addition to the $12,000 incurred in the purchase of Alderman's interest, I recognized it was necessary for us to practice as much economy as possible in our living expenses, and that we did so I think you will
252 hardly dispute. For more than two years Al. did all her own work in addition to taking care of the children, and a good part of the time nursed a sick baby. For over four years she has not been beyond the limits of Hope. That I have worked hard and faithfully always, in all kinds of weather, at all hours of day and night, many times in the bitter cold or driving rain, when you were snugly housed and sound asleep, you cannot deny. Many times I have gone for considerable periods of time hardly decently clothed, yet at no time since Jan. 1st, 1882, have I considered that I was working for $75 a month or any specific amount. I thought I worked hard enough to entitle me to my reasonable living expenses; yet, notwithstanding the fact that we used $400, which was received from sources entirely outside of the road, during the first two years, and in view of what I have stated above, you assert that I overdrew my account considerably, &c., &c. At the time you adopted the system of monthly payments I would like to ask why, in wiping out these overdrawals, which you said amounted to quite a large sum, you never advised me of the obligation of which you had released me, and why, during the long periods that must have passed for such a large sum to accumulate, did you never intimate to me that I was living beyond my means. I think I might also ask with propriety why at that time you did not think proper to consult me as to what amount should be allowed me for my services and upon what basis or theory you figured that my salary should be $100 while you allowed yourself $200. Your family expenses were not necessarily much, if any, greater than mine; yet I think that you have found by your own experience that even $200 is not a large sum and is sometimes hardly sufficient to cover all your monthly expenses. I have on one or two occasions suggested that I did not think that $100 was a reasonable allowance. On these occasions I was met with the argument that the general expenses of the road were now larger in proportion to its

earnings than those of the Mo. Pacific and other roads. True, it occurred to me, and I thought it ought to have occurred
253 to you, that while I was nominally a general officer and paid as such my duties and services were in addition of a very general nature, and that at times, for months at a time, I filled the position of engineer, conductor, roadmaster, bridge-builder, superintendent of construction, machinist, car-builder, and in fact any kind and class of work that no one else on the road could do fell to my lot. There have been times when I have performed the duties of three separate and distinct employees at one and the same time, and for this I never asked or received from the company a single dime as pay for which extra time or extra work, which, in the case of any other employee, would have been demanded and allowed as a matter or right. In view of these facts, which I think you have hardly considered as you should have done, I believe you will agree with me in saying the statesments above quoted from your letter to Al. was incorrect and represented a state of affairs which, as far as the company was concerned, never existed. It is true, however, that at the time I went to California I did overdraw my account with Mr. Carruth about $150; but as this was two years later than the time referred to in your letter, and as the money was charged to my personal account and it remained charged until Christmas of 1884, when you very kindly had the sum of $186 passed to my credit as a Christmas present, and for which I thanked you very much, in relation to our business affairs, according to my understanding, my interest in the road or company is exactly one-half of what yours is. If this corresponds with yours I will be glad if you will give Judge Williams such data and instructions as will enable him to draw up such an instrument as will be necessary and proper under the circumstances to establish and set forth our respective interests in such a way that should accident befall either of us there could be no misunderstanding. Before doing this, however, I think it would be well for you to make this the subject of a letter to me, so that we may agree upon the principal points of such an instrument before having it written out so as to avoid any unnecessary re-writing. Hoping that the suggestion will meet with your ap-
254 proval, and that you will give this matter your early attention, I remain as ever, your affectionate brother,

P. F. BEARDSLEY.

255 EXHIBIT "R" TO DEPOSITION — J. D. BEARDSLEY.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Aug. 26.—In full for am't due for money advanced to the Washington & Hope railway, as per original voucher-- 2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by H. M. Hoxie, gen. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Hope, 8 | 31, 1882, of the Missouri Pacific Railway Company two thousand $\frac{0}{400}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:
R. SPAIN ANDERSON.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 1074, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For am't advanced W. & H. R'y month of August, 1882.

Abstract No. 7968.

Registered in the auditor's office August, 1882.

256 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Sept. 5.—In full for am't due for money advanced acc't Ark. & La. R. R., as per original voucher $4,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by H. M. Hoxie, gen. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, 9 | 5, 1882, of the Missouri Pacific Railway Company four thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$4,000 (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

——— ———.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No 214, $4,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For money advanced month of Sep., 1882.

Abstract No. 9446.

Registered in the auditor's office September, 1882.

22—417

257 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Sept. 6.—In full for am't due for money advanced acc't Ark. & Ga. R. R., as per original voucher ---------- 2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by H. M. Hoxie, gen. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

—— ——,
General Auditor,
By —— ——,
Auditor of Disbursement.

Received, Sep. 6, 1882, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

—— ——.

NOTE—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 216, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For cash acc't Ark. & La. R. R. month of Sep., 1882.

Abstract No. 9663.

Registered in the auditor's office September, 1882.

258 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Sept. 12.—In full for am't due acc't of money advanced acc't Arkansas & La. R. R. 2,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by H. M. Hoxie, gen. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Hope, 9 | 14, 1882, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:
(Signed) A. A. GENROLLY.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 267, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For money advanced month of ———, 188-.

Abstract No. 10194.

Registered in the auditor's office September, 1882.

259 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Sep. 22.—In full for money advanced acc't Ark. & La. R'y ---------- 2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by R. S. Hayes, 1st V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

—— ——,
General Auditor,
By —— ——,
Auditor of Disbursement.

Received, Sep. 22, 1882, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

$2,000. (Signed) J. D. BEARDSLEY.
(Sign here.)

(Witness here.)
Witness:
—— ——.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 646, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For money advanced acc't Ark. & La. R. R. month of Sep., 1882.

Abstract No. 11247.

Registered in the auditor's office September, 1882.

260 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, St. Louis or Hope.

188-.—In full for am't due for am't advanced on account of Hope and Washington R. R. 2,000

[Written across the face:] A true copy. C. G. Warner, gen'l auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by H. M. Hoxie, 3rd V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Sep. 30, 1882, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

——— ———.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 1712, $2,000.

Receipt of J. D. Beardsley.

Address, St. Louis or Hope.

For am't advanced acc't H. & W. R. R. month of Sep., 1882.

Abstract No. 11967.

Registered in the auditor's office September, 1882.

261 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Oct. 6.—In full for am't advanced Ark. & La. R. R., as per original voucher and letter attached to same $2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen. trans. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Oct. 9, 1882, of the Missouri Pacific Railway Company, two thousand $\frac{00}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

J. M. KINSER,
Ag't Pa. Ex. Co.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 2246, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For am't advanced ac't Ark. & La. R. R. month of Sep., 1882.

Abstract No. 12952.

Registered in the auditor's office Sep., 1882.

262 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Oct. 11.—In full for am't advanced Arkansas & La. R. R., as per original voucher ---------- $2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen. trans. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Oct. 15th, 1882, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

J. M. KINSER,
Ag't Pa. Ex. Co.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 230, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For Ark. & La. R. R. month of Oct., 1882.

Abstract No. 13537.

Registered in the auditor's office October, 1882.

263 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Oct. 18.—In full for am't due for am't advanced Ark. & La. R. R., as per original voucher---------- $2,975 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account endered by aud. and duly authorized and approved by A. A. Talmage, gen. trans. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

—— ——,
General Auditor,
By —— ——,
Auditor of Disbursement.

Received, Oct. 23, 1882, of the Missouri Pacific Railway Company two thousand nine hundred & seventy-five $\frac{00}{00}$ dollars in full for the above account.

(Sign here.)

$2,975. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

J. M. KINSER,
Ag't Pa. Ex. Co.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 473, $2,975.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For am't advanced A. & L. R. R. month of Oct., 1882.

Abstract No. 14708.

Registered in the auditor's office October, 1882.

264 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Oct. 25.—In full for am't due for amount advanced Arkans. & La. R. R., as per original voucher ---------- $2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen. tran. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received ——, 188–, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:
J. W. KINSER,
Agent Pa. Ex. Co.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 1161, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For am't advanced Ark. & La. R. R. month of Oct., 1882.

Abstract No. 15197.

Registered in the auditor's office Oct., 1882.

23—417

265 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

188-.—In full for am't due for am't advanced Ark. & La. R. R., as per original voucher..... $2,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen. trans. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Nov. 7, 1882, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

J. M. KINSER,
Ag't Pa. Ex. Co.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 179, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For am't advanced Ark. & La. R. R. month of Nov., 1882.

Abstract No. 16483.

Registered in the auditor's office November, 1882.

266 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Nov. 5.—In full for am't advanced the Ark. & La. R. R., as per original voucher $2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen. trans. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, ———, 188–, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

J. M. KINSER,
Ag't Pa. Ex. Co.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 372, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For advances acc't Ark. & La. R. R. month of Nov., 1882.

Abstract No. 17876.

Registered in the auditor's office November, 1882.

267 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Nov. 8.—In full for am't due for and am't advanced Ark. & Louisiana R. R., as per original voucher------ 2,000 50.

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations and erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen. trans. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, ———, 188–, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

(Signed) J. M. KINSER,
Ag't Pa. Ex. Co.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.
Accounts Payable.
Disbursement voucher.
The Missouri Pacific Railway Company.
Record No. 228, $2,000.
Receipt of J. D. Beardsley.
Address, Hope, Ark.
For am't advanced Ark. & La. R. R. month of Nov., 1882.
Abstract No. 17875.
Registered in the auditor's office November, 1882.

268 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Nov. 22.—In full for am't advanced Ark. & La. R. R., as per original voucher $2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen. trans. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———.
Auditor of Disbursement.

Received, ———, 188–, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

(Signed) J. M. KINSER,
Ag't Pa. Ex. Co.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 1069, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For advance acc't Ark. & La. R. R. month of Nov., 1882.

Abstract No. 18722.

Registered in the auditor's office November, 1882.

269 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Nov. 28.—In full for am't advanced Ark. & La. R. R., as per original voucher 2,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations and erasures must not be made in this voucher. If not accepted it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen'l trans. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

—— ——,
General Auditor,
By —— ——,
Auditor of Disbursement.

Received, ——, 188–, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

(Signed) J. M. KINSER,
Ag't Pa. Ex. Co.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 1623, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For am't advanced A. & L. R. R. month of Nov., 1882.

Abstract No. 19288.

Registered in the auditor's office November, 1882.

270 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Dec. 7.—In full for am't advanced Ark. & Louisiana R. R., as per original voucher ---------- $2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen. trans. man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

—— ——,
General Auditor,
By —— ——,
Auditor of Disbursement.

Received, Dec. 13th, 1882, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY,
Per P. F. B.

(Witness here.)
Witness:
(Signed) J. M. KINSER,
Ag't Pa. Ex. Co.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 184, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For am't advanced A. & La. R'y month of Dec., 1882.

Abstract No. 20265.

Registered in the auditor's office December, 1882.

271 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Dec. 14.—In full for am't advanced Ark. & La. R. R. month Dec., 1882, as per original voucher---------- 2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen. transportation man.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, ———, 188–, of the Missouri Pacific Railway Company two thousand $\frac{00}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY,
Per P. F. B.

(Witness here.)

Witness:
(Signed) J. M. KINSER,
Ag't Pa. Ex.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 227, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For am't advanced Ark. & La. R. R. month of Dec., 1882.

Abstract No. 21079.

Registered in the auditor's office Dec., 1882.

272 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Dec. 21.—In full for am't advanced Ark. & La. R. R., as per original voucher---- ---------- 2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A Talmage, gen. transportation manager; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Dec. 24, 1882, of the Missouri Pacific Railway Company two thousand $\frac{0}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY,
Per P. F. B.

(Witness here.)

Witness:
(Signed) J. M. KINSER.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St Louis, Mo.

Copy.
Accounts Payable.
Disbursement voucher.
The Missouri Pacific Railway Company.
Record No. 609, $2,000.
Receipt of J. D. Beardsley.
Address, Hope, Ark.
For cash advanced month of Dec., 1882.
Abstract No. 21860.
Registered in the auditor's office Dec., 1882.

24—417

273 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Hope, Ark.

1882, Dec. 28.—In full for am't due for am't advanced Ark. & La. R. R., as per original voucher $2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by A. A. Talmage, gen. transportation manager; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, ——— 188–, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:
J. M. KINSER,
Ag't. Pac. Ex.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 1315, $2,000.

Receipt of J. D. Beardsley.

Address, Hope, Ark.

For am't advanced Ark. & La. R'y month of Dec., 1882.

Abstract No. 22532.

Registered in the auditor's office Dec., 1882.

274 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

1883.—In full for amount due for cash advanced for construction of the Ark. & La. railroad during month of September, 1883, as per original voucher..... $2,000 00

[Written across the face:] A true —. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by R. S. Hayes, 1 V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Sep. 7th, 1883, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

——— ———.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 198, $2,000.

Receipt of J. D. Beardsley.

Address, Washington, Ark.

For cash advanced acc't Ark. & La. R. R. month of Sep., 1883.

Abstract No. 8371.

Registered in the auditor's office Sep., 1883.

275 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

1883.—In full for amount due for amount advanced account of construction Ark. & La. R'y, as per original voucher (for second week in Oct.) ---------- $2,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by R. S. Hayes, 1st V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Nov. 21st, 1884, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

——— ———.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 245, $2,000.

Receipt of J. D. Beardsley.

Address, Washington, Ark.

For cash advanced acc't con. Ark. & La. R'y month of Oct., 1883.

Abstract No. 17141.

Registered in the auditor's office Oct., 1883.

276 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

188–.—In full for amount due for amount advanced account construction Ark. — La. R'y, as per original voucher (for 4th week in Oct.)---------- $2,000

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by R. S. Hayes, 1st V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Dec. 17, 1884, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

——— ———.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 244, $2,000.

Receipt of J. D. Beardsley.

Address, Washington, Ark.

For cash advanced acc't Ark. & La. R'y month of Oct., 1883.

Abstract No. 20664.

Registered in the auditor's office October, 1883.

277 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

1883.—In full for amount due for cash advanced account of construction of Ark. & La. R'y, as per original voucher (for 3rd week in Oct.) 2,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by — and duly authorized and approved by R. S. Hayes, 1st V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, Dec. 6, 1884, of the Missouri Pacific Railway Company two thousand $\frac{00}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

(Signed) H. H. WHELESS.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 246, $2,000.

Receipt of J. D. Beardsley.

Address, Washington, Ark.

For cash advanced acc't Ark. & La. R'y month of Oct., 1883.

Abstract No. 19067.

Registered in the auditor's office Oct., 1883.

278 Duplicate.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

1883.—In full for amount due for cash advanced for construction of the Ark. and La. R. R., as per papers attached to original voucher 2,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by R. S. Hayes, 1st V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, 8 | 10, 1883, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

——— ———.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Duplicate.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 208, $2,000.

Receipt of J. D. Beardsley.

Address, Washington, Ark.

For cost acc't constru. Ark. & La. R. R. month of Aug., 1883.

Abstract No. 5087.

Registered in the auditor's office Aug., 1883.

279 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

1883.—In full for amount due for cash advanced for construct. of Ark. & La. railroad, as per original voucher-- 1,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations and erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by H. M. Hoxie, 3d V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

—— ——,
General Auditor,
By —— ——,
Auditor of Disbursement.

Received, ——, 188–, of the Missouri Pacific Railway Company ten hundred $\frac{00}{100}$ dollars in full for the above account.

(Sign here.)

$1,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

—— ——.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 260, $1,000.

Receipt of J. D. Beardsley.

Address, Washington, Ark.

For cash advanced for con. of A. & L. R. R. month of Aug., 1883.

Abstract No. 6825.

Registered in the auditor's office Aug., 1883.

280 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

1883.—In full for am't due for cash advanced for construction of the Ark. & La. r'road, per original voucher ------ $1,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by R. S. Hayes, 1st V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, ———, 188–, of the Missouri Pacific Railway Company one thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$1,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

——— ———.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Copy.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 560, $1,000.

Receipt of J. D. Beardsley.

Address, Washington, Ark.

For acc't construction A. & L. R. R. month of August, 1883.

Abstract No. 6828.

Registered in the auditor's office August, 1883.

281 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

1883.—In full for amount advanced to J. D. Beardsley to be used in construction of the Ark. & La. R'y, as per original voucher 2,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by R. S. Hays, first V. pr'd't; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, ——, 188–, of the Missouri Pacific Railway Company two thousand $_{100}$ dollars in full for the above account.

(Sign here.)

8—. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:
J. H. BURT.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 217, $2,000.

Receipt of J. D. Beardsley.

Address, Washington, Ark.

For cash acc't Ark. & La. R'y month of Sep., 1883.

Abstract No. 8790.

Registered in the auditor's office Sep., 1883.

282 *Accounts Payable.*

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

1883.—In full for amount due for cash advanced for construction of Ark. and La. railway, as per statement attached to original voucher ---------- $2,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not ac-epted as made it must be returned for correction.

I certify that the above is a true copy of an original account rendered by aud. and duly authorized and approved by R. S. Hayes, 1st V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received ———, 188–, of the Missouri Pacific Railway Company two thousand $\frac{}{100}$ dollars in full for the above account.

(Sign here.)

$2,000. (Signed) J. D. BEARDSLEY.

(Witness here.)

Witness:

——— ———.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 279, $2,000.

Receipt of J. D. Beardsley.

Address, Washington, Ark.

For cash advanced ac't con. Ark. & La. R'y month of Sep., 1883.

Abstract No. 9409.

Registered in the auditor's office Sep., 1883.

283 Copy.

Accounts Payable.

The Missouri Pacific Railway Company to J. D. Beardsley, Dr.

Address, Washington, Ark.

1883.—In full for amount due for cash advanced for construction of the Ark. & La. railway, as per original voucher $2,000 00

[Written across the face:] A true copy. C. G. Warner, gen. auditor. Alterations or erasures must not be made in this voucher. If not accepted as made — must be returned for correction.

I certify that the above is a true copy of an original account rendered by and duly authorized and approved by R. S. Hayes, 1st V. P.; that the same has been examined by me and found correct; that it has been duly registered and filed in the auditor's office.

——— ———,
General Auditor,
By ——— ———,
Auditor of Disbursement.

Received, ———, 188–, of the Missouri Pacific Railway Company two thousand $\frac{00}{100}$ dollars in full for the above account.

(Sign here.)
$2,000. (Signed) J. D. BEARDSLEY.
(Witness here.)
Witness:
——— ———.

NOTE.—The above receipt must be dated and signed by the party in whose favor this voucher is made, or, when signed by another party, the authority for so doing must in all cases accompany it. Return voucher to D. S. H. Smith, local treasurer, St. Louis, Mo.

Accounts Payable.

Disbursement voucher.

The Missouri Pacific Railway Company.

Record No. 171, $2,000.

Receipt of J. D. Beardsley.

Address, Washington, Ark.

For cash advanced Ark. & La. R'y month of Oct., 1883.

Abstract No. 10921.

Registered in the auditor's office Oct., 1883.

Ex. "R" to deposition — J. D. Beardsley.

284 H. H. WHELESS, being introduced by the plaintiff and duly sworn, deposes and says:

Examined by T. B. MARTIN, Esq.:

Q. What business are you engaged in?

A. I am auditor for the Arkansas and Louisiana Railway Company.

Q. What is your age?

A. Thirty-one years.

Q. How long have you been working for the Arkansas and Louisiana Railway Company?

A. Since January, 1884. I would like to modify my reply and say that I am auditor of the constructor and lessee of the Arkansas and Louisiana railway.

Q. Have you any of the letter-heads of that railroad here?

A. I have not.

Q. Are you auditor of the Arkansas and Louisiana Railway Company?

A. I am the auditor of the constructor and lessee of the Arkansas and Louisiana Railway Company and have always considered myself so.

Q. Do you recollect the date of your appointment as auditor?

A. January, 1884.

Q. By whom were you appointed?

A. By Major J. D. Beardsley.

Q. Do you not appear on the letter-heads of the Arkansas and Louisiana Railway Company as auditor of that company?

A. I am on the letter-heads of the Arkansas and Louisiana railway, on which J. D. Beardsley appears as lessee and manager, as auditor.

Q. As auditor have you kept the books and accounts of the Arkansas and Louisiana Railway Company?

A. No; I have not, only incidentally.

285 Q. How have you kept them incidentally?

A. I doubt very much whether I have ever done any work for the Arkansas and Louisiana Railway Company. I cannot call to mind anything that I ever did that was not done in pursuance of the business of the constructor and lessee.

Q. When did you first hear of the title of lessee and general manager being conferred on J. D. Beardsley?

A. When I opened the books I understood that he was lessee and general manager of the railroad. He had the title of general manager, I first heard, in last September. I heard his title of lessee and general manager at different times. I first heard of the managership in September last. Major Beardsley told me when I opened the books that he was lessee and constructor of the railroad. I heard it at two different and distinct times; one was last September and the other was when I first took charge of the books. He told me he was lessee when I took charge of the books.

Q. When was the title of lessee and general manager publicly adopted by J. D. Beardsley?

A. In September it was put on the letter-heads. I think it was about that time. I am not quite certain about dates.

Q. Are the books you kept as auditor labeled; and, if so, how?

A. Yes, sir; they are labeled; they are labeled Arkansas and Louisiana railway. My recollection is that the books were there when I came there. I am not positive. They may have come a day or two after I got there.

Q. Is it not a fact that the books that were labeled were made to order and after you went there?

A. Yes, sir; they were made to order and after I began keeping the books of the road.

Q. Out of what funds were you paid for your services?

286 A. Out of the funds in the hands of W. H. Carruth, treasurer.

Q. Treasurer of what?

A. He was treasurer of the railroad company, and also kept the accounts of the lessee and constructor, and was treasurer of the company.

Q. I will ask you if on the books you have kept there was not an account transferred from the books of Baird & Carruth, and was not that account in the name of the Arkansas and Louisiana Railway Company transferred from their books to the books you kept in the name of the Arkansas and Louisiana Railway Company?

A. Yes, sir; there was. The account was taken up and distributed to the various accounts in my books. The accounts that I found in Mr. Carruth's books were taken up and distributed to their proper accounts in my books.

Q. How was the account from which you distributed these items on your books headed? Was it the account of the Arkansas and Louisiana Railway Company?

A. Yes, sir; it was headed Arkansas and Louisiana Railway Company.

Q. I will ask you this further question: Is it true that the Arkansas and Louisiana Railway Company, since you began keeping books, as you claim, for the lessee, had any books kept that were kept by you?

A. No, sir; they had not. I kept no books for the Arkansas and Louisiana Railway Company. Your question is a double question. I know of no books that have — kept for the Arkansas and Louisiana Railway Company.

Q. I will ask you, then, if the earnings and all the transactions of the Arkansas and Louisiana Railway Company of which entries have been made in the last two years were not made by you and upon books kept by you?

A. I cannot answer that question yes or no. I consider that all business that has come into my hands belongs to the constructor and lessee.

Q. That is as definitely as you can answer it?

287 A. Yes, sir; that is as definitely as I can answer it.

Q. Who has kept the account of the earnings and transac-

tions of the Arkansas and Louisiana Railway Company within the last two years?

A. I do not know.

Q. Do you know whether any has been kept or not?

A. I do not know.

Q. Can you tell from the books you have kept what the earnings of the Arkansas and Louisiana Railway Company have been within the last two years?

A. I can tell you what the earnings of the road are as managed by the lessee and general manager.

Q. How can you tell that?

A. From the records.

Q. What records?

A. From the books kept by me.

Q. Have you any means of telling from your books how much was paid for the building at Nashville?

A. I could tell by figuring it out.

Q. Do your books show how much was paid J. H. Bell for land at Nashville?

A. Not all of it. My accounts show $800 paid. It was paid $150 in money, and he gave two notes for $650.

Q. I will ask you if there is any entry on these books showing any other payment besides these two.

A. No, sir; not on the books kept by me.

Q. Is there any other entry transcribed from Mr. Carruth's books?

A. No, sir; I am positive of that.

Q. Your books, then, show payments of $800? Please give dates.

A. October 19th and 20th, 1885.

288 Q. Do you know what land that was for?

A. I do not know what land that was for.

Q. Where did the money come from out of which these payments were made?

A. It was money that was earned by the road under Major Bierdsley's management as lessee.

Q. It came from the earnings of the road?

A. That was not my answer. It came from the earnings of the road while under the management of J. D. Beardsley as lessee.

Q. Did you know whether it was under anybody else's management or not?

A. Not within my knowledge it was not.

Q. Is there any entry on your books showing payments to Rector and Yowell or A. M. Rector for land at Nashville?

A. There are two entries on my books showing money paid to Rector and Yowell.

Q. Can you tell from your books what these payments were for?

A. No, sir; notes were given before I took charge. There were two notes for $500 to these two men which were paid. There was nothing in the notes to show what they were made for.

Q. Will your books there show anything in regard to some iron that was bought in Shelby county, Tennessee, and afterwards sold to some parties in Texas, I think?

A. Most of the iron was sold before I took charge. A small portion of it was sold after I took charge. I do not know whether that was iron bought in Tennessee or St. Louis.

Q. Are there any entries in your books showing sales of iron and other material to parties in Texas? If so, state the aggregate amount.

A. My books show notes of the Lampasas street railway for $2,451.92, which I was informed was for iron sold them. The sale was made before I went there.

289 Q. Do your books of original entry show what that was for?

A. No, sir; my entries do not show what it was for. It simply says notes of the Lampasas Street Railway Company.

Q. How does the entry read in your books?

A. Bills receivable; old material account; notes of Lampasas Street Railway Company as follows: Note due April 1–4, 1884, $1,173.25; note due Oct. 13, 1884, $642; note due July 13, 1884, $636.67, aggregating $2,451.92.

Q. Is there any other entry on your books in regard to old material account?

A. There is a credit of $500 received from the St. Louis Wooden Gutter Company. There is a credit of $12 for some old rails sold to Justin Brothers. The $500 credit was on June 16th, 1884. The $12 one was on July 18th, 1884. On September 2, 1884, there is $1,113.91 for rails and fish-plates sold to the Oak Land and Lumber Company. On December 31st, 1884, there is a credit of $168.21, balance from the St. Louis Wooden Gutter Company. That is all I have on old-material account. There may have been some small entries passed to construction account.

Q. How is that account headed in the ledger?

A. Old-material account.

Q. What do these entries indicate?

A. They indicate old material sold. There was on material on the road when I took charge. It had been put into the road.

Q. Are there any other entries in your books showing sales of old material?

A. I cannot remember any.

Q. Is there any entry on the journal kept by you on page No. 1, of date January 1st, 1884, crediting J. D. Beardsley with the sum of $5,365.50? If so, please give the entry in full in your answer.

A. There is; construction account to J. D. Beardsley; ma-

290 terial owned by J. D. Beardsley personally before the commencement of the Washington and Hope railroad, proceeds of which were used in the construction; 105½ tons of 25 lbs. rails, $3,692.50; 2⅔ miles fish-plates and bolts, $300; 12,000 lbs. spikes at 2c., $240; one passenger box and four narrow-gauge cars at $100, $500; cash from B. & O. Railroad Company, $433; cash from B. & O. R. R. Co., $200.

Q. Do these books or any of them show the amount paid for the construction of Major Beardsley's house in Washington?

A. The exact amount will have to be figured out. They do; they show $3,481.53.

Q. From what source came the money that made these payments?

A. From the Arkansas and Louisiana railway, as managed by J. D. Beardsley, lessee.

Q. What are the dates of the payments?

A. From April 24th, 1884, to May 21st, 1886.

Q. Do these books anywhere show that they are the books of J. D. Beardsley, lessee?

A. The nature of the account shows it.

Q. Is there a credit and debit to J. D. Beardsley entered on these books?

A. There is not.

Q. In what way do these books show that they are the books of J. D. Beardsley, lessee?

A. They credit the Arkansas and Louisiana Railway Company with the stock and bonds that were taken from them for construction.

Q. Please turn to your entry and give it as made on the books, and the date of it.

A. Stock account to Arkansas and Louisiana Railway Company. February 29th, 1884, assumed value of $200,000 stock taken on account of construction, $20,000. Bond account to Arkansas and Louisiana Railway Company. March 12, 1884, 240 bonds, $1,000 each, of the Arkansas and Louisiana railway—amount, $240,000;
291 bonds taken on account of construction, assumed value 80c., $192,000. April 24th, 1884, stock account to Arkansas and Louisiana Railway Company, $120,000, issued on the road from Ozan to Washington; assumed value, $12,000. July 26th, 1884, land grant to the Arkansas and Louisiana Railway Company; value of land grant from actual sales, $6,683.30.

Q. What does that entry indicate?

A. The amount that was received for land that was donated.

Q. Donated by whom?

A. The State, I understand. That was before I was there.

Q. From what account did you ascertain the amount paid for J. D. Beardsley's house in Washington, and how is it headed?

A. It is headed J. D. Beardsley.

Q. Is there an account on your books headed cotton-seed account for the seasons 1884–'5 and 1885–'6?

A. There is such an account, and those are the seasons.

Q. I will ask you to state whether or not of the profits arising on account there was a division between J. D. Beardsley and Paul F. Beardsley for the years 1884–'5.

A. There was a division in the proportion of $\frac{1}{3}$ to $\frac{2}{3}$.

Q. What do your books show in regard to the cotton-seed transactions for the years 1885–'6—whether there was a division of profits or not?

A. There was no division of profits for the years 1885–'6.

Q. Who received the profits of the business for that season?

A. J. D. Beardsley.

Q. How much?

A. $915.92.

Q. On what date was the entry made on the books giving J. D. Beardsley credit for that sum?

A. It was paid on vouchers. One was dated March 30th,
292 1886, for $500, and the other was dated May 28th, 1886, for $415.92.

Q. Who drew those vouchers?

A. I did, as auditor.

Q. Upon whom?

A. Upon the treasurer, W. H. Carruth, and they were paid by him.

Q. Upon what fund were they drawn?

A. Upon the same fund that other vouchers were drawn.

Q. How came you to draw the vouchers for J. D. Beardsley for these two sums—I mean at whose instance?

A. At his instance; they were drawn on the general fund in the hands of the treasurer.

Q. I will ask you to turn to the account of Vinton Alderman on your books. What is the amount of credits given him, the date, and for what purposes, as shown by the original entry?

A. $12,000, for assumption of balance due him to date, January 1st, 1882.

Q. Do you know anything of the nature of that business?

A. It was for his interest in the road. I only know from what Major Beardsley told me. I mean the Arkansas and Louisiana railway.

—. From conversations with Major Beardsley in regard to the matter, was it for the entire balance due Vinton Alderman for his interest in the Washington and Hope railroad?

A. I inferred so.

Q. Now, what is the amount of his debits, and from what date do they extend?

A. From December 25th, 1882, to March 20th, 1886, aggregating $5,500; and this shows due him June 26th, 1886, $6,500.

Q. Are the debits on the book payments on the account?

A. Yes, sir; payments on the account.

Q. From what source were these payments made?

293 A. Most of it was paid from money taken in by the road as managed by J. D. Beardsley, lessee. Some of it was paid from money Major Beardsley borrowed from his wife; $200 was paid by Major Beardsley from the proceeds of a stave machine sold by Alderman; $800 was paid from money borrowed by Major Beardsley from his wife, which money was put into the general fund and vouchers for Alderman drawn against it. Had it not been for this money borrowed the condition of the road would not have permitted these payments to have been made.

Q. When Major Beardsley borrowed the money from his wife, which you have just mentioned as going into the general fund of

the road, was she not given credit on the books for this amount, and has she not been paid back out of the funds of the road?

A. She was, and she has been paid back out of the same funds the other payments were made.

Q. Was not J. D. Beardsley credited on the books with the proceeds of the stave machine sold by Alderman?

A. He was.

Q. Does it not result, then, that the payments made to Alderman were made out of the earnings of the railroad?

A. As managed by J. D. Beardsley, lessee, yes.

Q. What is the amount of the debits of J. D. Beardsley on the ledger, the total amount, and from what dates do they extend?

A. The entries are made from April 24th, 1884, to May 31st, 1886, aggregating $5,034,07.

Q. Do any of the debits there made include the amount paid to him as salary for his services?

A. They do not.

Q. What is the amount of his credits on the ledger account?

A. $5,587.53.

294 Q. In the $5,587.53 is the item $5,365.50 for material owned by J. D. Beardsley personally before the commencement of the Washington and Hope railroad, proceeds of which were used in the construction of the Arkansas and Louisiana railroad, included?

A. That item is included; $633 of that was for money received from the Baltimore and Ohio railroad; $4,732.50 was for material in the Washington and Hope railroad.

Q. I will ask you if there is an account on the books kept by you of the construction of the telephone line.

A. There is. We have no company. We call it the telephone line.

Q. How much does it show to have been paid for the construction of the telephone line from Hope to Nashville?

A. $927.22.

Q. From what sources came the money that paid for that?

A. From the same source as the other money mentioned—from the earnings of the road as managed by J. D. Beardsley, lessee.

Q. I will ask you from what source came the money that paid for the construction and furnishing of the Nashville hotel.

A. From the same source as the money for building the telephone line.

From lack of time to complete the same the taking of this deposition is adjourned until Saturday morning, June 26th, 1886.

SATURDAY, *June 26th*, 1886.

The taking of this deposition is renewed.

Present: The plaintiff, by Mess. Jones & Martin, and the defendants, by Mess. —. M. Moore, A. B. Williams, and J. D. Conway

Examined by T. B. MARTIN, Esq.:

Q. Will your book show the purchase of fire-brick; and, if so, what is the aggregate amount paid for them?

A. They do. One lot, $36, bought by and charged to J. D. Beardsley; another lot, $11, bought by and charged to Major Beardsley. One lot was for 500 at $11 and the other was for 2,000 at $36; another lot of 2,000 at $44 was charged to construction account for building the Nashville Hotel. That is all.

295

Q. Out of what funds were these bricks paid for?

A. Out of the funds of the lessee.

Q. Out of the earnings of the road?

A. Out of that and other funds that belonged to the lessee and the same funds that other sums were paid out of.

Q. From what source did the lessee receive the funds to pay these debts?

A. From the earnings of the road, the sales of land—that is about all—and some sales of old material. That is about all the sources I can think of.

Q. You testified yesterday that $800 had been paid, as shown by the books kept by you, to Cap. Bell for the purchase of land about 1½ miles from Nashville, in Hempstead county. Upon examination of the books kept by W. H. Carruth, as treasurer, what amount do you find to have been paid to him for that purpose?

A. On Oct. 6th, 1882, I find $400. On Dec. 27th, 1882, I find $825, which appears on Mr. Carruth's account as paid for this purpose.

Q. Does the entry of $825, mentioned in your last answer, include the amount of $800, testified to by you yesterday, or is it an additional sum?

A. It is an additional sum.

Q. Is it not true that the money for the construction of the Nashville Hotel, the money for the purpose of buying land furnished to Cap. Bell, the money furnished to build the residence of J. D. Beardsley, in Washington, the money furnished to pay for the construction of the telephone line from Hope to Nashville, all came from the earnings of the Arkansas and Louisiana railway?

A. It came from the earnings of the Arkansas and Louisiana railway as managed by J. D. Beardsley, lessee. I will add to that answer, from other funds of the lessee, as well as sales of lands, etc.

296

Q. What lands?

A. Property at Nashville and possibly some of the money from the land grant, and possibly some more lands that Major Beardsley bought. He owned some land. I do not know anything about that.

Q. What are the earnings of the Arkansas and Louisiana railway, as shown by your books?

A. Earnings shown by my books are as follows:

1883.	Gross.	Estimated expenses.	Net.
Oct.	2,467 83	1,400	167 83
Nov.	3,291 67	1,380 49	1,911 18
Dec.	3,559 11	1,422 75	2,136 36
	9,318 61	4,203 24	5,115 37

Road completed about 2 miles beyond Ozon.

		Actual expenses.	
1884	38,402 10	13,588 58	24,813 52
1885	53,573 44	19,143 56	34,429 88

Road completed to Nashville Oct. 4, 1884.

Cross-examination by J. M. MOORE, Esq.

Q. When were you employed in the capacity that you have been working at in connection with the Arkansas and Louisiana railway?

A. In January, 1884.

Q. Who employed you?

—. J. D. Beardsley.

Q. In what capacity did he employ you?

A. I understood that he was the manager of the Arkansas and Louisiana railroad as lessee and manager.

Q. Under the construction contract?

A. Yes, sir; he so informed me when I opened the books.

297 Q. Who was then operating the Arkansas and Louisiana railway and has been operating it since that time?

A. J. D. Beardsley.

Q. Do I understand that the railroad was operated by J. D. Beardsley as lessee, and not by the Arkansas and Louisiana Railway Company?

A. That was my understanding.

Q. You have spoken in your examination-in-chief of the account of the railway. Do you intend by that to refer to the account of the railway company or to the account of J. D. Beardsley, as lessee, in connection with the construction and operation of the railroad?

A. To the account of J. D. Beardsley, lessee.

Q. You spoke yesterday in your examination-in-chief of the books being labelled as the books of the Arkansas and Louisiana Railway Company. Are those books marked Arkansas and Louisiana Railway Company or Arkansas and Louisiana railway?

A. My recollection is that they were labelled Arkansas and Louisiana railway. I cannot be positive, as I have not the books with me.

Q. State what your social relations have been with Paul F. Beardsley since your connection with the road?

A. They have been exceedingly friendly. I do not know that I can say more than that.

Q. What position has he held in connection with the road in that time?

A. At first he had the title of assistant superintendent; afterwards it was changed to master of transportation.

Q. Are you acquainted with the duties that have been performed by him during the time he was connected with the road?

A. I think so.

Q. State the nature and extent of his duties.

A. Mr. Beardsley's duties always seemed to me to be of quite a general nature. He superintended the track, shops, taking
298 up wood on the road; attended to almost any interest that might come up that needed attention, and in Major Beardsley's absence represented him on the road.

Q. Did his position seem to be coequal or subordinate to Major Beardsley?

A. I always thought it subordinate to Maj. Beardsley.

Q. During the time of your connection with the road what has been your understanding from the course of conduct of Paul F. Beardsley in connection with the road as to his relation to the property? Also state on what you base your answer.

(Objected to by plaintiff as incompetent.)

A. I understood him to be an employee of the road. I never knew of any interest Paul Beardsley had. When I was first connected with the road, from the fact that he was Major Beardsley's brother, I may have speculated upon his having some interest in the road, but, not being able to see how such interest could exist without my knowledge, I was forced to the conclusion that he was only an employee. This conclusion was strengthened as my connection with the road became more intimate. I noticed that during Major Beardsley's absence matters of importance were laid over generally until his return. This was specially the case in making special rates. I noticed this more than anything else that came to my knowledge. When Major Beardsley was at home he managed things entirely, as far as I was able to see.

Q. Were your relations during that time with Major Beardsley intimate?

A. They were very intimate and confidential. They were necessarily so from my position.

Q. Did he talk freely to you in regard to his interest in the road and the business generally?

A. Very freely, indeed.

Q. Did you ever during that time hear any expression from him indicating that Paul F. Beardsley sustained any other rela-
299 tion to the road than that of an employee?

A. I did not.

Q. What did the action and conduct of Major Beardsley during that time indicate the relation of Paul Beardsley to be?

(Objected to as incompetent.)

A. That of an employee.

Q. Referring to the entire course of conduct with Major Beardsley and Paul Beardsley, both in relation to the road and the manage-

ment during the time of your connection with the road, was that conduct consistent or inconsistent with the proposition that they were joint owners of the road?

(Objected to by plaintiff as incompetent.)

A. I would say it was inconsistent.

Q. Do the books kept by you show all the earnings derived from the road?

A. They do, since I took charge.

Q. Do they show all the disbursements that have been made and on what account?

A. They do.

Q. You spoke in your examination-in-chief yesterday, on several occasions, of the application of the funds derived from the road by J. D. Beardsley. Do you mean in that connection of funds derived from the operation of the road by him as lessee?

A. I do.

Q. Did the funds received by Major Beardsley from sources outside of the road go into the books kept by you, and were these funds applied in the same manner as other funds derived from the operation of the road?

A. They did; the funds from other sources than the earnings of the road went into my books and were applied in the same
300 way as funds earned by the road, and were applied and disbursed in the same manner as funds derived from the operation of the road.

Q. Did Paul Beardsley know of the manner of keeping the books during this time?

A. I think he did. He often examined them, looked over them, and looked over the statements that were made. On one occasion, in looking over a balance-sheet that was headed "balance-sheet of J. D. Beardsley, builder and lessee," he called my attention to a credit of Major Beardsley of about $5,300 for material, and suggested that it was singular that Major Beardsley should take a credit on his own books, or something to that effect. My recollection is that this was in the summer of 1884. My recollection is that it was before the road got to Nashville. I cannot say positively, but, to the best of my recollection, it was in the summer of 1884.

Q. Did Paul Beardsley ever make any objections to the manner of keeping these accounts and these disbursements?

A. I have no recollection that he ever did.

Q. I wish you would state the amount your books show was received from the collection of the donation notes—that is, notes executed by the citizens of Washington to Major Beardsley under his original contract for the construction of the Washington and Hope railroad, and what disposition was made of the proceeds of these notes.

A. My books show the collection of donation notes of $645 principal and $143.38 interest. This money went into the general fund. It was applied in the same way that other funds derived from the operation of the road was applied.

Q. Turn to the books of Carruth as treasurer and see how much is shown on them as collected on the donation notes, and state what disposition was made of the proceeds.

A. I find on the books of Carruth between the dates of Dec.
301 4th, 1880, and May 17th, 1883, certain notes which I take to be the donation notes referred to, amounting to $6,186.75, and the money received from these notes was paid to the St. Louis Bolt and Iron Company. Other notes may have been paid and entered by Carruth showing so much money coming from the parties paying without specifying that it was for these notes. Of this I am not advised.

Q. On what account were these payments made to the St. Louis Bolt and Iron Company?

A. My understanding is that it was for iron bought by the Washington and Hope Railway Company.

Q. Does the amount which you state as having found on the books of Carruth include the amount first stated by you as taken from your own books?

A. No; it is additional.

Q. Turn to the account and state what amount has been paid to the St. Louis Bolt and Iron Company and on what account it was paid since September 1st, 1882, at which date the Washington and Hope Railway Company was sold to the Arkansas and Louisiana Railway Company.

A. My books show payment of $9,277.03. From the best information I gather from the entries on Carruth's books $5,613.60 was paid by him.

Q. On what accounts were these payments made and what amount, if any, was paid on account of the Washington and Hope railway?

A. I am informed that the payments were made for iron purchased for the Washington and Hope railway.

Q. Do you know from the account rendered by the St. Louis Bolt and Iron Company that the payments were made on the account stated in your last answer?

A. I cannot state positively without having the account. My recollection as to how the account was rendered is not distinct.

Q. Do you remember what that account was rendered for—whether for iron or rails?

302 A. I do not.

Q. Can you state all the amount stated by you as having been paid to the St. Louis Bolt and Iron Company since September 1st, 1882?

A. In the aggregate, $14,890.43 was paid. The money that has been paid since my books were opened was paid by J. D. Beardsley from the funds of the Arkansas and Louisiana railway as operated by him as lessee.

Q. Now state what amount has been paid since your books were opened.

A. $2,372.80 has been paid in cash; $6,904.63 has been paid in notes taken for material sold. I think all have been paid by the parties giving the notes except some $1,500, which the parties failed

to pay and we had to pay ourselves. So far as I know, these notes were given by the parties giving them except about $1,500, which the parties defaulted on, and Major Beardsley, as endorser, had the notes to pay. It was paid out of the funds of J. D. Beardsley, lessee, the earnings of the road as managed by J. D. Beardsley, lessee.

Q. By whom was this $1,500 note not paid given?

A. By the Lampasas Street Railway Company or their representatives. I do not know how the note was signed.

Q. Has this note ever been paid by the maker?

A. No, sir.

Q. You stated in your examination-in-chief that a certain amount was received from the Lampasas Street Railway Company and the St. Louis Wooden Gutter Company for old material sold. Do you know how much of this went to the payment of the Washington and Hope railway debts?

A. No, sir; I do not.

Q. Do you know how much of the receipts referred to in my last question was paid to the St. Louis Bolt and Iron Company for material?

A. I find that a draft of the Oak Land and Lumber Company for two cars of rails, plates, &c., amounting to $1,113.91, was sent
303 to the Bolt and Iron Company. This was to be credited, however, on account of material purchased for the extension of the road to Nashville. That is all the information I can find in regard to the credit.

Q. Have you any knowledge of this transaction other than what you derive from the entries on the books?

A. I have not.

Q. Have you any knowledge in regard to the entries of $5,365.50 credited to J. D. Beardsley, which you referred to in your examination-in-chief, than what is based on the entries as they appear in the books in the account?

A. I have no personal knowledge of these entries, except that Major Beardsley has told me that the prices that appear for the material were very much less than they were at the time they went into the road. My recollection is that Major Beardsley so advised me at the time the original entries were made, but I cannot be certain.

Q. What is the aggregate amount shown by the books to have been received and applied to the construction and improvement of the road from the donation notes made to Major Beardsley?

A. From my books and the best information I can get from Carruth's books I find the aggregate of the donation notes collected to be $6,975.13; this includes interest. These payments went to the St. Louis Bolt and Iron Company—that is, about $61.00 of them.

Q. Have the collections of the donation notes since your connection with the road gone into the general account which you describe as the account of the Arkansas and Louisiana railway as operated by the lessee?

A. To the best of my recollection they have.

Q. And have the proceeds of old material gone into the same fund?

A. All collections that have been made since my connection with the road, to the best of my recollection, have gone into that fund

304 Q. You stated in your examination-in-chief that the books show payments of $5,500 on indebtedness to Alderman for his stock in the Washington and Hope railway. I wish you would state how these payments were made and if any part you include in the $5,500 remains unpaid at this time.

A. There is an acceptance or note for $500 which will be due July 26th, 1886.

Q. Whose acceptance is that to which you refer now?

A. J. D. Beardsley's.

Q. Was not $1,200 of this amount paid before you took charge of the books?

A. $1,250 was so paid.

Q. You stated yesterday in your examination-in-chief that most of the payments made to Alderman were made from the earnings of the road. Do you mean to say from the money earned directly by the operation of the road or the general fund which includes money derived from the operation of the road and other sources?

A. From the general fund derived from the operation of the road and other sources, being the same fund referred to in other cases.

Q. You also stated in your examination-in-chief that the money with which the *money* was built—the money applied to the building of the residence of J. D. Beardsley and the construction of the telephone line—was derived from the earnings of the railroad. Do you mean that these moneys were derived from running the road or from the general fund derived from running the road and other sources?

A. From the general fund as derived from all sources.

Q. Has there ever been at any time since your connection with the road any money or fund belonging to the Arkansas and Louisiana Railroad Company as distinguished from the funds of J. D. Beardsley, lessee?

A. There has not to the best of my recollection.

305 Q. All times, then, when you speak of the money or funds of the railway they were the moneys of J. D. Beardsley, lessee?

A. Yes, sir.

Q. Referring to the payments to John Bell for land in Hempstead county, please state whether any of this indebtedness paid was evidenced by notes; and, if so, whose notes they were.

A. Part of it was evidenced by the note of J. D. Beardsley. Part of the payment was in cash, and part of the notes of Major Beardsley at thirty and sixty days.

Q. Have all the amounts that have been paid on the residence of J. D. Beardsley been charged to him on his personal account?

A. To the best of my knowledge they have.

Q. Did you, during the progress of the transactions in regard to the purchase of cotton seed for the Little Rock Oil Company, have any knowledge of this business?

A. I think I did; I managed the business.

Q. During what years was the cotton seed purchased for the Little Rock Oil Company?

A. During the seasons 1884–'5 and 1885–'6.

Q. By what person was this cotton seed purchased?

A. The first year the cotton seed at Washington was purchased by Ed. Alexander; at Ozan, by Mitchell & Goodwin.

Q. Were these men connected with the Washington and Hope railway or with J. D. Beardsley, lessee?

A. They were not.

Q. How were they paid for their services in connection with the cotton seed?

A. There was a division of the profits on the seed they bought.

Q. Did any employee of the lessee during either season render any service in connection with this cotton seed?

306 A. The first season a very small amount at Nashville was bought by the agent there. The next season a little more. At Ozan, both years, the cotton-seed business was conducted by Mitchell & Goodwin on the basis just mentioned. The first season the business in Washington was conducted by Alexander, as previously mentioned. The second season it was conducted by a young man that I employed to attend to the cotton-seed business, with the understanding that when he was not engaged in the cotton-seed business he would assist in railroad work. He was paid on the regular pay-rolls of the company, his salary being divided between the cotton-seed and railway accounts, my recollection being that it was divided half and half.

Q. Did you make a settlement with the agent of the oil company of this business; and, if so, did you make the settlement on behalf of J. D. Beardsley, lessee, or personally?

A. My understanding was that it was personal. The settlements were made at the end of each season.

Q. You were asked yesterday on your examination-in-chief in regard to the division of the profits of that business between J. D. and Paul Beardsley. Please state fully all the circumstances connected with that division and how it came to be made, as far as you know.

A. My recollection in regard to the matter is that at the end of the first year I reported to Major Beardsley the amount of the profits on the cotton seed. He asked me if in my opinion it should go into the railroad fund or to him personally. After thinking the matter over I told him I thought there was no reason why it should go into the railroad business. Then he instructed me to have the amount placed to his credit at Mr. Carruth's. A few minutes afterwards he told me to have two-thirds of the amount placed to his credit and one-third to the credit of Paul Beardsley; also stating that as we were pressed for funds at that time to let the entries stand over for the present.

In consequence the matter was left over for, I think, some
307 months. Then the entries were made as he suggested.

Either at that time or a day or two afterwards Major Beardsley remarked to me that it would be a pleasant surprise to Paul Beardsley.

Q. Did you understand from the conversation with Major Beards-

ley and his instructions that this one-third of the profits was given to Paul Beardsley as a matter of right because he had an interest in it or as a mere gratuity?

(Objected to by plaintiff as incompetent.)

A. From his conversation in regard to its being a pleasant surprise to Paul Beardsley I would have inferred that it was a gratuity. It made the impression on my mind that it was just a gift. No question of right in the matter was ever mentioned in any conversation with Major Beardsley.

Q. Who furnished the money to buy the cotton seed?

A. J. D. Beardsley.

Q. From whom did he obtain it?

A. He obtained it from the Little Rock Oil Company.

Q. I understand, then, that no funds of J. B. Beardsley, lessee, were used in the purchase of cotton seed?

A. For a short time prior to January 1st, 1886, some money was advanced from the funds of the lessee for the purchase of cotton seed upon an understanding with the Little Rock Oil Company made by Major Beardsley that about January 1st, 1886, they would advance us a sum about sufficient to pay for the cotton seed the balance of the season. To the best of my knowledge this is the only time when the funds of the lessee were used for the purpose of buying cotton seed. The money paid out from time to time under this arrangement and the sales entered and from the account the amount on the first of January aggregated about $1,800. This was returned on January 1st—that is, on January 1st they gave a draft for
308 $6,000 to J. D. Beardsley. This money, the $1,800 advanced for cotton seed, came from the funds of the lessee and came from the funds of the road as managed by J. D. Beardsley, lessee. It was refunded out of the $6,000 sent to Major Beardsley.

Q. Do you know why Major Beardsley asked the question as to how the profits of the cotton seed should be applied?

A. No reason was assigned at that time. He just asked me the question.

Q. Please refresh your memory so as to state if you did not understand at that time from conversations had with Major Beardsley that the inquiry was based on the fact that the St. Louis, Iron Mountain and Southern Railway Company had an interest in the construction contract, and that it was that the interests of said company might not be injuriously affected?

A. Major Beardsley had previously informed me that such an interest existed, and I considered that it was on that account that he asked me in regard to the disposition of the cotton-seed money.

(Objected to by plaintiff as incompetent.)

Q. Did you know J. D. Beardsley on other occasions to make donations or gifts of money to Paul F. Beardsley?

A. I remember only one now. On the account rendered by Carruth on February 1st, 1885, I noticed a charge of $187.76 as paid Paul Beardsley. I called Major Beardsley's attention to the matter

and asked him in regard to it. He advised me that it was all right; that it was the amount of an overdraft on Paul Beardsley's account on Carruth's books, and that he had requested Carruth to charge it to the railroad, and I think told me at the time that he intended the amount as a Christmas present to Paul Beardsley.

Q. Did you at any time during your connection with the road ever hear him make any complaint or objection to the amount of his salary?

A. I cannot recollect anything of that kind.

Q. Has there not during your connection with the road been large amounts of money derived by borrowing and outside
309 sources and used in the operation and construction of the road?

A. There has.

Q. By whom and upon whose credit has this money been obtained?

A. It was obtained on the notes of J. D. Beardsley.

Q. Did the personal credit of Paul F. Beardsley ever contribute to the fund?

A. At one time he borrowed $400 from Paul Beardsley. This is the only instance I recollect in which he contributed money to the road. Major Beardsley's notes were indorsed by Baird & Carruth.

Q. Did J. D. Beardsley, during your connection with the road, have the sole and entire management of the road and corporation, or was the management divided with Paul Beardsley?

A. It seemed to me that Maj. Beardsley had the exclusive management of the road at all times.

Q. With whom, if with any one, did he principally consult with regard to the management of the road?

A. To the best of my recollection, Mr. Carruth was Maj. Beardsley's principal financial adviser, and he consulted with me and with Paul Beardsley. I cannot say that he consulted with Paul Beardsley about the finances.

Q. Were J. D. Beardsley and Paul Beardsley in your office a good deal during the time of your connection with the road?

A. When I first began with the road there was only one office. During the greater portion of the time J. D. Beardsley's office and mine were the same. Paul Beardsley was out on the road a great part of the time, but when in Washington he was in the same office.

Q. Were your relations with J. D. Beardsley close and confidential?

A. They were.

Q. Did he consult with you and talk freely with you in regard to his connection with and interest in the road?

310 A. He did. He told me in detail all the various stages through which the road had passed and of his interest that existed in it—at least I understood it as to all his interest. He talked very freely of the interest of the Iron Mountain Company in the road and how that interest came about, and, in fact, talked to me very freely of all matters that came up. My understanding, in

fact, that there was nothing in connection with the road that I was not familiar with through my connection with it.

Q. Do I understand you to say in answer to my former question that the result of your intercourse with him as well as with Paul Beardsley left the impression on your mind that Paul Beardsley had no interest in the road?

(Objected to by plaintiffs as incompetent.)

A. Yes, sir.

Q. If Paul Beardsley had owned an interest in the road would it have been consistent with the relations that existed between you and J. D. Beardsley, and with the fact that he was in the habit of communicating with you in regard to his interest in the road, for J. D. Beardsley to have withheld from you the knowledge of Paul Beardsley's interest?

(Objected to by plaintiff as incompetent.)

A. It would have been inconsistent, in view of our confidential relations, for him to have withheld the information.

Re-examination by T. B. MARTIN, Esq.:

Q. In your cross-examination you say that the conduct of Paul F. and John D. Beardsley was inconsistent with the idea that they could have been joint owners of the road. Please state what that inconsistent conduct was.

A. I noticed that when Major Beardsley was at home he seemed to have entire control of the road; that Paul Beardsley was subject to his orders just the same as others connected with the railroad. In Major Beardsley's absence matters would frequently come up for attention that belonged to the ordinary business of the road,
311 and they were deferred until he came home. In some cases matters relating to special rates came up and were deferred until he came back. On one occasion a scraper was sold and Major Beardsley cancelled the sale, and the scraper was returned, much to the annoyance of the party buying it. These things caused me to come to that belief.

Q. In your cross-examination you say that the funds received by Major Beardsley from sources other than the earnings of the road, sale of material, lands, &c., were applied in the same manner as money arising from those sources. Please state the amounts and dates of the moneys thus received by Major Beardsley.

A. If I stated that there were such funds I referred to the money received from the Baltimore and Ohio railroad, which is $633 and which was received prior to my taking charge of the books, but was reported to me and entered upon the date of January 1st, 1884, and to the proceeds of a stave machine sold by Alderman for Major Beardsley, amounting to $200. If there are other funds I cannot particularize them.

Q. Do you know whether there were other funds or not?

A. I cannot remember them.

Q. Do you know whether there were other funds or not?

A. I do not know whether there were or not.

Q. Do your books show any other?

A. I do not call them to mind now. They might show on a close examination.

Q. Was Major Beardsley given credit on the books on his personal account for these two items?

A. He was.

Q. You say that Paul Beardsley frequently examined the books and was familiar with the manner in which they were kept. About how often did he examine those books prior to January, 1886?

312 A. It is impossible for me to say. The books were always open to his inspection, and several times he examined them prior to January, 1886.

Q. How many times did you ever know of his examining them?

A. I cannot remember how many times.

Q. You testified on cross-examination that J. D. Beardsley gave his notes, endorsed by Baird & Carruth, and upon these notes money was raised for operating the road. Were not these notes paid out of the earnings of the road, sale of old materials, lands, &c.?

A. They were.

Q. From what source came the money that paid for the cotton seed bought for the Little Rock Oil Company?

A. From J. D. Beardsley, and was sent to him by the Little Rock Oil Co.

Q. Did you not testify before noon that about $1,800 was furnished from the earnings of the road, sales of land and materials?

A. My recollection is that I testified that that much was advanced for the purchase of cotton seed, and that it was afterwards paid back by the Little Rock Oil Company.

Q. From what source came the $1,800?

A. From the funds frequently referred to—the earnings of the road, sales of land, materials, &c.

Q. What was done with the $6,000 paid by the Little Rock Oil Company on January 1st, 1886?

A. It was paid to the St. Louis, Iron Mountain and Southern Railway Company on indebtedness due them.

Q. Was it carried on the books of the company kept by you?

A. Yes, sir.

Q. In cross-examination you say that Major Beardsley and you were on intimate relations, and that you derived your knowl-

313 edge of the interests in the road from conversations with him. Is it true that Major Beardsley told you on account of the confidence he reposed in you and the intimate business relations existing between you in nearly everything connected with the road and his transactions?

A. I think so.

Q. Did he ever tell you how much he paid for the iron narrow-gauge engine and cars bought in Shelby county, Tennessee?

A. He did not.

Q. Did he ever tell you anything about his execution and deliv-

ery to Paul Beardsley of the memoranda of stock sold to him about January 1st, 1882?

A. He did, some time in February, 1886.

Q. Did he ever tell you about it before the institution of this suit?

A. A few days before.

Q. Did he tell you anything about it before the correspondence between him and Paul Beardsley that preceded the institution of this suit?

A. He did not.

Cross-examination by J. M. MOORE:

Q. What was it that Major Beardsley told you in regard to the contract referred to a moment ago in your examination-in-chief?

Objected to by plaintiff as incompetent.

A. He only told me that he gave Paul Beardsley such a memoranda.

Q. For the purpose of refreshing your memory I will ask you whether Major Beardsley stated to you, at the time that he told you of the memoranda having been given to Paul Beardsley, that he thought that Paul Beardsley had abandoned it long ago.

Objected to by plaintiff as incompetent.

A. My recollection is that he did, and also something about Paul Beardsley having a mine in California that he expected to sell.

314 Q. Referring to the sums received from outside sources, were not the donation notes heretofore referred to of that character, and were not part of these collected since your connection with the road?

A. I suppose they would be considered of that character, and I think 600 and odd dollars and interest have been collected since I became connected with the road.

Q. Do not the books of account kept by you and Carruth show that nearly $7,000 have been received from that source alone?

A. They do. My recollection is that this morning I testified to 6,900 and odd dollars being so received.

Q. You referred awhile ago to the examination of the books by Paul Beardsley. Do you mean by that that he examined the books as one having an interest in them would examine them, or that he merely looked over them in a casual way?

A. I cannot say. I remember that on one occasion he came into the office. I had two desks, and sometimes I would see him looking over the books, but what kind of an examination he was making of the books I cannot say.

Q. Did he at any time catechise you in regard to the books, and did his manner indicate special interest or anything more than a mere casual examination for curiosity?

A. I cannot remember that the manner of keeping the books was ever mentioned between us, and his examination of the books seemed to me to be casual.

Q. I believe that you have heretofore stated that he never at any time questioned the manner of keeping the books and conducting the business.

A. I do not remember that he ever did.

Q. Please look at the paper handed to you and state whether it is the letter-head used by the lessee to which you referred in
315 your examination-in-chief.

A. Yes, sir; that is the letter-head to which I referred. I make it Exhibit "A."

Q. You stated in your cross-examination that the books were open for the inspection of Paul Beardsley. Do you mean by that that you had instructions from Major Beardsley to let Paul Beardsley inspect the books, or that it was merely a matter of courtesy?

A. The books were either lying on my desk or were in the open safe, and Paul Beardsley looked over them without the matter ever being referred to.

Re-examination by T. B. MARTIN, Esq.:

Q. Was the letter-head made Exhibit A to your deposition the same form used prior to January 1st, 1886?

A. It was used for a time prior to 1886. My recollection is that we began using it in the early fall of 1885.

Q. Did you not testify in your cross-examination that the bonus notes were delivered to the St. Louis Bolt and Iron Company on an account due them?

A. I do not think I did.

Q. Is it not true that they were?

A. That was before my time. I cannot testify of my own knowledge. That was before I took charge of the books.

Q. Were not the bonus notes referred to made payable to the Washington and Hope Railway Company?

A. I cannot say; I do not remember.

Copies of the statement of account for material and money furnished by the St. Louis, Iron Mountain and Southern railway for the construction of the Arkansas and Louisiana railway, as rendered by the St. Louis, Iron Mountain and Southern railway, are
316 hereto attached, marked Exhibit "10," and made a part of this deposition.

H. H. WHELESS.

(Endorsed): Filed July 3rd, 1886. Ralph L. Goodrich, clerk.

W. H. CARRUTH, being duly sworn and introduced by the defendant, deposes and says:

Examined by J. M. MOORE, Esq.:

About the time the Washington and Hope railway was received John D. Beardsley became the superintendent of it. I am not positive, but it was about the 1st of January, 1881. It was commenced in the fall or summer of 1879. He was appointed in the

early part of 1881, and his salary was $2,000 per annum. All his salary was not paid; I think more than half of it was never paid. Paul Beardsley was assistant superintendent, and was appointed directly after he came there. He was under a salary of $75 per month. That was changed, I think, December 1st, 1883, when it was increased to $100 per month. The rails and ties of the Washington and Hope railroad were most of them in bad condition in 1882. It was so in the beginning of the year and they got worse as they were worn. It frequently took all day or more to make one trip of ten miles and back. The Washington and Hope Railroad Company, for an institution of its size and property, was considerably in debt. It was incumbered. It was not able to pay its debts and hold its property. The Washington and Hope railroad was not self-supporting. The superintendent's salary was not paid for want of funds. There was not sufficient earnings to make the necessary repairs on the road. I remember a very bad washout in May, 1882; the company did not have the means to repair it. Major Beardsley came to me several times and wanted my firm to advance the money. It would take $1,500, and I did not feel safe to advance that money. I afterwards did lend him a smaller sum, I think $400. He fixed it up so that he could run with that. The earnings of the Washington and Hope railway did not con-
317 tribute to the extension of the road from Washington to Nashville.

Q. You stated in your previous examination in this case that at the time the construction account was opened in the name of the Arkansas and Louisiana Railway Company there was no liquidation or administration of the old business. Please state if there was at that time anything in the treasury belonging to the old railway.

A. No, sir; they were overdrawn; there were no funds there.

Cross-examined by T. B. MARTIN, Esq.:

Q. You say in your direct examination that J. D. Beardsley in 1881 was elected superintendent of the Washington and Hope railway and his salary fixed at $2,000. By whom was that salary fixed?

A. By the directors.

Q. You say that not more than half the salary of the superintendent was paid. Do you mean his salary as superintendent of the Washington and Hope railway alone?

A. It ran from the time he was appointed superintendent up until the time I was instructed to pay him $200 per month salary—until December 1st, 1883—from January, 1881, to December, 1883. I do not remember the date the Washington and Hope Railway Company went into the extended company—the Arkansas and Louisiana Railway Company. That $2,000 salary may have lapped over on to that time. The $2,000 salary went on from the time he was first elected superintendent until December 1st, 1883.

Q. What is the date of the construction contract?

A. I am not positive without the record, but I think in May, 1883. On looking at the record it was May 22nd, 1883.

Q. Did J. D. Beardsley's salary as superintendent, as fixed by the board of directors at $2,000, continue after the execution and delivery of the construction contract?

A. Yes, sir.

318 Q. The records of the board of directers will show the fixing of the salary and the election of the officers?

A. I think so if they are correctly kept.

Q. Will they also show the fixing of the salary of Paul F. Beardsley as assistant superintendent?

A. I do not think it does. I think Paul Beardsley was appointed as assistant superintendent by J. D. Beardsley, superintendent.

Q. Who fixed the salary of Paul F. Beardsley?

A. I do not know whether it was done in the directory or by J. D. Beardsley as superintendent; I think by J. D. Beardsley.

Q. You say that in 1882 the Washington and Hope railway was encumbered. Do you know to what extent?

A. It had one main debt and considerable smaller floating debts. My general idea would be from $15,000 to $18,000.

Q. Have you no books that would show?

A. No, sir; I kept the treasurer's books, but no books that would show the amount of the incumbrance.

Q. Will your books show the salary account of J. D. Beardsley?

A. You mean the $2,000 salary?

Mr. MARTIN: Yes, sir.

A. I presume the secretary's record book would show it.

Q. Did you as treasurer keep the account of moneys paid to J. D. Beardsley while acting as superintendent under the $2,000 salary you have mentioned?

A. I charged him with the moneys when he got them. I do not know that I could show from the account what the sums of money were for. I was in the habit of handing him money for various purposes and on account.

Q. Then how did you arrive at the conclusion that he was

319 paid only half his salary?

A. He frequently talked to me about it and wanted it. He kept me constantly in remembrance of the amount due him.

Q. Is it not a fact that J. D. Beardsley frequently drew money from the agents at the depots that was not entered on your books?

A. I do not know that. If he ever drew any I do not know of it. I do know this, that he sometimes drew money from the agents and reported the amount to me to be charged and credited. I do not know whether he drew any he did not report or not.

Q. You say the Washington and Hope railway was not self-supporting. At what time did the railway which succeeded to the rights of the Washington and Hope railway become self-supporting?

A. Just the time cannot be stated, but it became so and more than self-supporting after the road reached Nashville.

Q. Have you ever examined the earnings book of the Washington and Hope railway and the earnings book of its successor?

A. I have frequently looked at them.

Q. Do you remember the net earnings for the years beginning with 1883?

A. No, sir; I have not. There may have been money belonging to the road that was properly appropriated that did not come through my hands. If so, it was contrary to instructions, for all agents were ordered to send money to my hands.

Q. Do you know of any money that was expended that did not come through your hands?

A. I do not remember any case.

Q. Is it not true that prior to the adoption by the company and you of keeping accounts by a system of vouchers that moneys were frequently paid out without coming into your hands and of which you kept no account?

A. I do not know. It might possibly have been so.

320 Q. You say in your examination-in-chief that the earnings of the Washington and Hope railway did not contribute to extending the railroad to Nashville. Was not the Washington and Hope railway being run or its successor using the same line, cars, engines, &c., during the period of construction from Washington to Nashville of the Arkansas and Louisiana railway?

A. The same identical moneys from their earnings may have been paid on construction debts, but more money was paid out of the construction funds on the old Washington and Hope railway debts than on the other. Upon the whole, the construction fund helped the old railroad largely more than its earnings did the construction.

Q. Upon what security was the construction fund you have just mentioned obtained and from what source?

A. There was a written agreement on that. I am not clear on that. I only know from hearsay. It was secured. I stated in my other deposition that I knew from hearsay that it all came from the Iron Mountain railroad and was secured by mortgage bonds or mortgage lien—I do not know which—on the railroad. I do not know whether it was on the entire road. The agreement may specify a part of it.

Q. Did you ever hear J. D. Beardsley talk about it?

A. He talked to me frequently about it. That was the idea I got from him about it—that it was a lien on the road and its bonds.

Q. Did J. D. Beardsley ever tell you that he deposited the bonds and stock of the Washington and Hope Railway Company as security for the money to extend the road from Washington to Nashville?

A. I do not remember that he did, but in a conversation with him there was something said about depositing railroad bonds or stock as collateral security, but just what road or stock I do not now remember.

Q. What road were you talking about at the time?

321 A. We were talking about the railroad. I do not remember at these former talks how much road there was. If before the change of name, it was the Washington and Hope railroad; if after the change, it was the railroad as it existed at the time we talked.

Q. Did J. D. Beardsley obtain the money to extend the line from Washington to Nashville on his individual responsibility, or was the credit based on the railroad and his interests therein?

A. Major Beardsley told me about that time that Mr. Hays refused to contract with the directory and said he knew nothing of them; that his contract was with J. D. Beardsley. Whether or not Mr. Hays would have let him have the money without the railroad to back him I do not know.

Q. Do you know whether he did let him have it or not?

A. Only from hearsay; from Major Beardsley talking to me about the time the transaction was being had.

Q. Do you know from conversations with J. D. Beardsley that he let him have it on the strength of the railroad, or on Beardsley's individual responsibility based on the property outside of the railroad?

A. Major Beardsley mentioned to me something about collaterals to secure the borrowed money he was to get from the Iron Mountain road. He was to put up these collaterals, the railroad bonds and stock; they were the bonds and stock of this railroad. I do not know whether it was to be the bonds and stock of the Washington and Hope railway or of the new railroad when built.

Q. At what time was the conversation mentioned in your last answer?

A. Some time in summer or fall of 1882.

Q. Were you not the president of the Washington and Hope Railway Company?

A. Yes, sir.

Q. Also of the Arkansas and Louisiana Railway Company?

A. Yes, sir.

322 Q. Do you know all the directors of those two companies and the amount of stock each owned in either company?

A. No, sir; I cannot answer from recollection.

Q. Do you not know that their stock interest was merely nominal?

A. It was.

Q. Same with your own, was it not?

A. Yes, sir.

Re-examination. Examined by J. M. MOORE:

J. D. Beardsley began to get money from the Iron Mountain Company in August, 1882, I think. That was money that was used in constructing the railroad from Washington to Nashville. I do not remember whether the bonds of the Arkansas and Louisiana Railway Company had been issued then or not.

W. H. CARRUTH.

EXHIBIT "A" TO H. H. WHELESS' DEPOSITION.

J. H. Beardsley, lessee and general manager; W. H. Carruth, treasurer; P. F. Beardsley, master of transportation; H. H. Wheless, auditor.

Arkansas and Louisiana railway; office of lessee and general manager.

WASHINGTON, ARK., ——, 18—.

323 EXHIBIT "10."

Arkansas and Louisiana Railway Company in Account with St. L., I. M. & S. Ry Co.

1882.			
Aug.	28.	To cash advanced	$2,000 00
Sep.	5.	" " "	4,000 00
"	6.	" " "	2,000 00
"	13.	" " "	2,000 00
"	22.	" " "	2,000 00
"	30.	" " "	2,000 00
Oct.	7.	" " "	2,000 00
"	12.	" " "	2,000 00
"	20.	" " "	2,000 00
"	26.	" " "	2,000 00
Nov.	2.	" " "	2,000 00
"	16.	" " "	4,000 00
"	24.	" " "	2,000 00
Dec.	1.	" " "	2,000 00
"	8.	" " "	2,000 00
"	15.	" " "	2,000 00
"	22.	" " "	2,000 00
"	30.	" " "	2,000 00
1883.			
Aug.	31.	" " "	2,000 00
"	"	" " "	1,000 00
"	31.	" " "	1,000 00
Sep.	30.	" " "	2,000 00
"	"	" " "	2,000 00
"	"	" " "	2,000 00
Oct.	31.	" " "	2,000 00
"	"	" " "	2,000 00
324			
Oct.	31.	To cash advanced	2,000 00
"	"	" " "	2,000 00
			$58,000 00
1882.			
July	31.	To spikes and splices	975 00
Aug.	"	" " " bolts	980 00
Oct.	31.	" services G. Knobel, locating line between Washington and Nashville, Arkansas	208 33
"	"	" wood, oil, waste, &c.	41 75
Nov.	—.	" one engine and tender	6,000 00
"		" 625 1540-2240 tons iron rails at $30	26,865 59
"		" 51 187 lbs. fish-plates, at 2c.	1,023 74
"		" 601 1540-2240 tons iron rails at 30	18,050 62
March		" rail fastenings	1,434 35
April		" " "	400 57
May		" " "	512 43
"		" spring steel and labor	47 20
June		" stationery furnished	35 00
July		" repairs to engine No. 410 while in service at Hope, Arkansas	16 16

Aug.	—. To am't paid St. L., B. & I. Co. for spikes		825 00	
"	" am't paid for printing bonds		38 75	
	" service of sixteen cars		605 33	
	" am't paid for printing bonds		200 00	
Sep.	" expense engineer and fireman running engine 461 between L. R. & Hope		61 24	
Oct.	" expenses and repairs to engine 477, &c.		71 00	
Nov.	" one engine and tender 461		3,000 00	
"	" use of three passenger coaches 2 days each at 5 dollars		30 00	
	" am't due account transportation of material in 1880		1,448 00	
Dec.	" prop'n Hope, Ark., Oct., Nov., & Dec.		105 00	
"	" supplies, labor, &c., repairs, &c.		46 52	
				63,021 58
	Am't forwarded			$121,021 58
325	Amount bro't forward			$121,021 58
Bill No.				
11162.	Amount paid for printing bonds, Dec., '82		$115 00	
11245.	" " " " mortgages, Oct., '82		14 00	
11364.	" " " " copies mortgages, Jan., '83		36 00	
16349.	Use of flat cars, Jan., 1884		934 00	
16350.	Damage to T. & P. car 196, Jan., 1884		31 96	
16399.	Use of flat cars, "		68 33	
16431.	Prop'n expense Hope station, Oct. & Dec., '83–'84		35 00	
16581.	Stationery, &c., January, 1884		24 54	
16607.	Repairing car & material & supplies, Feb.		122 74	
16852.	Prop'n expenses Hope station, Jan.		35 00	
17083.	Amount paid for bolts, Feb.		535 60	
17014.	Labor, &c., engine, Feb.		213 52	
17143.	Use of ballast cars, March		7 66	
17353.	Proportion expenses Hope station, March		35 00	
17372.	Labor of sectionmen, repairing track at Hope, March		6 00	
27489.	Repairing cars and labor account, spring, April		144 63	
17699.	Use of flat cars, "		68 66	
17714.	Proportion expense Hope station, "		35 00	
17811.	Repairing cars, engine truck, &c., May		35 91	
18309.	Use of flat cars, "		80 00	
18329.	Prop'n expense Hope station, "		35 00	
18414.	Labor acc't, engine truck, June		14 19	
18782.	Freight charges on material, "		503 09	
18783.	Use of flat cars, July		62 65	
19352.	" " " "		49 65	
19376.	Freight charges on material, Aug.		220 13	
19813.	" " " Sep.		1,282 66	
20300.	Use of flat cars, "		256 00	
20308.	Freight charges on material, Oct.		855 24	
20846.	Use of flat cars, Nov.		48 05	
	21475. Use of flat cars, Dec.		126 55	
326	21753. Use of flat cars, Dec.		87 75	
	Amount paid Mercantile Trust Company, Apr., '85:			
Account	notary fee		2 00	
"	signing bonds		225 00	
				6,246 61
				127,268 19
Less bill for material returned			885 30	
"	claims allowed for delays and non-compliance with contracts		21,000 00	
				21,885 30
				105,382 89
Add interest on $105,382.89 for average period of 2¼ years to July 1st, '85–'7, 6%				14,226 68
				$119,609 57

327 *The Deposition of R. B. Williams, Taken on the Part of the Plaintiff.*

PAUL F. BEARDSLEY
v.
J. D. BEARDSLEY.

R. B. WILLIAMS, being duly sworn, deposes and says: My name is R. B. Williams; am a lawyer by profession; reside in Washington, Ark., and am thirty-four years old; am secretary of the Arkansas and Louisiana Railway Company, and was secretary of the Washington and Hope railway and also of the Arkansas and Indian Territory Railway Company, and as such secretary kept a record of the proceedings of the board of directors.

There were one hundred thousand dollars of paid-up capital stock issued in the Washington and Hope Railway Company in shares of twenty-five dollars each, one share to H. B. Holman, one share to W. P. Hart, one share to A. B. Williams, one share to R. B. Williams, one share to J. D. Conway, one share to W. H. Carruth, one share to Thomas H. Simms, one share to J. K. Jones, and three thousand nine hundred and ninety-two shares to J. D. Beardsley. This was the first and only paid-up stock that was ever issued by the Washington and Hope Railway Company. The citizens of Washington and vicinity expended something over ten thousand dollars in constructing and grading the road-bed between Washington and Hope. Some time in the month of July, 1879, after the money was expended on the road-bed, the board of directors of the company began negotiations with J. D. Beardsley for the completing and operating the road. These negotiations resulted in a contract between the company and J. D. Beardsley by which he acquired the title to all the stock and property of the road except eight shares of stock which were reserved by the gentlemen named above to qualify them as directors of the company. Under that contract
328 J. D. Beardsley went to work on the road and soon afterwards associated Vinton Alderman with him in the contract. They completed the original road between Washington and Hope. With what means they completed it or where they got those means I do not know. The road was afterwards accepted by the board of directors of the company as completed according to the contract, the completion to bear date January 1st, 1881. The resolution accepting the road was passed by the board on the 7th day of March, 1882, the formal examination of the road having been made by a committee appointed for that purpose on the 4th day of March, 1882. A copy of the resolution accepting the road by the board of directors, together with a copy of a letter from J. D. Beardsley to W. H. Carruth, president, are hereto attached, marked Exhibit A, and made part of this deposition. In addition to the stock and property of the road given to Beardsley under the contract of construction the board of directors agreed to give him the road-bed already constructed in part, on which over ten thousand dollars had

already been expended, and in addition thereto to give him all the lands accruing to said company under an act of the General Assembly entitled "An act to donate certain lands to the Washington and Hope Railway Company," approved March 5th, 1879, and in addition thereto the board of directors agreed to procure personal obligations of citizens aggregating the sum of ten thousand dollars, payable to J. D. Beardsley, one-half thereof payable ten days after the completion of the road and the other half thereof payable one year thereafter. My recollection is that of these bonus notes about eight thousand was raised.

Exhibit "A" to this deposition shows the disposition of the balance. The hundred thousand dollars of stock issued to the Washington and Hope railway was delivered to the parties to whom it was issued, and when the Arkansas and Indian Territory railway was organized and purchased the property and franchises of the Washington and Hope railway this stock was surrendered upon an agreement and understanding that it should be replaced by stock in the Arkansas and Indian Territory railway.

329 In point of fact there was never any stock issued in the Arkansas and Indian Territory railway.

The terms of this purchase and sale are shown by Exhibit "G" to the plaintiff's complaint. At the suggestion of the management of the Iron Mountain railway, with whom Mr. Beardsley was negotiating for money and materials for the extension of the road, the Arkansas and Louisiana Railway Company was organized and purchased the rights, properties, and franchises of the Arkansas and Indian Territory railway. Exhibit "H" to plaintiff's complaint shows the terms of this sale. There have been issued in the Arkansas and Louisiana Railway Company two thousand shares of stock of the value of one hundred dollars each as follows: Ten shares to H. B. Holman, ten shares to W. P. Hart, ten shares to A. B. Williams, ten shares to R. B. Williams, ten shares to J. D. Conway, ten shares to W. H. Carruth, ten shares to Thomas H. Simms, ten shares to B. K. Jones, one hundred shares to Paul F. Beardsley, eighteen hundred and twenty shares to J. D. Beardsley, all dated June 20th, 1883. I do not know whether or not the one hundred shares issued to Paul Bearsley was ever delivered to him or not. His stock and that of J. D. Beardsley were delivered to J. D. Beardsley. The stock of the other parties was delivered to them. J. D. Beardsley came to me about the 20th of June, 1883, and told me, as I remember, that it was necessary to deposit the stock of the company as collateral security with the Iron Mountain people to procure money and material for the use of the road, and asked me to issue the stock, which I did, I suppose, in shares and amounts as he directed, though I do not remember that such was the case, but I think I would not have known to whom and in what amounts to have issued the stock except by his direction. About the same time he asked me to indorse my certificate of stock to him, which I did as of date June 22nd, 1883. Upon examination I find that the certificates of stock issued to W. H. Carruth, W. P. Hart, J. D. Conway, R. B. Williams, Thos. H. Simms, and A. B. Williams were indorsed on the 22nd of June, 1883. The

indorsements upon the certificates issued to J. K. Jones and H. B. Holman bear no date. Each indorsement is to J. D. Beards-
330 ley. There have been no certificates of stock in the Arkansas and Louisiana railway issued to him since that date. Upon examination of the records of the Washington and Hope railway I find that on the 14th day of June, 1880, the said company and J. D. Beardsley, with the consent and under the direction of the board of directors of said company, executed a mortgage to the St. Louis Bolt and Iron Company to secure the payment of fifteen thousand dollars, the purchase-money, as I understood, of materials for the construction of the road.

Exhibit "B" attached hereto is a copy of said mortgage and the proceedings of the board of directors of said railway company in connection therewith.

Exhibit — to defendant's answer is a copy of the contract between the Washington and Hope Railway Company and J. D. Beardsley.

There was a mortgage executed by the Arkansas and Indian Territory Railway Company to the Mercantile Trust Company of New York as trustee for the holders of the bonds to be issued by the Arkansas and Indian Territory railway. Fifty thousand dollars of bonds were issued under said mortgage and certified by the Mercantile Trust Company as trustee and delivered to J. D. Beardsley on account of construction. When the Arkansas and Louisiana railway entered into the construction contract with J. D. Beardsley one of the conditions of that contract was he should cancel and surrender the fifty thousand dollars of Arkansas and Indian Territory bonds in order that the mortgage executed by the Arkansas and Louisiana Railway Co. might become the first mortgage on the property of the company. A copy of the mortgage executed by the Arkansas and Indian Territory Company is hereto attached, marked Exhibit "C," and a copy of the mortgage executed by the Arkansas and Louisiana Railway Company to the Mercantile Trust Company is hereto attached, marked Exhibit "D." Each of these mortgages was ratified by the stockholders and directors according to law.

Question. From the records kept by you as secretary does
331 it appear that — the first meeting of the directors and of stockholders held after the organization of the Arkansas and Indian Territory Company that Paul F. Beardsley was a stockholder and director in said company?

Answer. It does. This meeting was held on the 14th day of September, 1882.

Q. Do you know for what sum the lands donated by the State of Arkansas to the Washington and Hope Railway Company was sold? If so, about what date, to whom, and what application was made of the money?

Ans. The lands were sold to Lorin A. Gates, of the State of Iowa, I think, in the month of June, 1884, and I think for about the sum of sixty-two hundred dollars. I do not know what disposition was made of the money.

Cross-examination:

I was a director of the Arkansas and Louisiana railway at the time the construction contract was formed. I know of no one, except J. D. Beardsley and the said Arkansas and Louisiana Railway Company, being interested in the contract. I have been on very intimate terms with J. D. Beardsley during the time he has been at Washington and have been on friendly terms with Paul F. Beardsley, though I cannot say that I have been intimate with him. I never heard either of the parties say that P. F. Beardsley had an interest in the road or construction contract until about the first of February, 1886.

Ques. Will you please state what you heard stated by either of them on the occasion to which you refer, viz., about the first of February, 1886?

Ans. I decline to answer without Mr. Paul Beardsley's consent. The conversation referred to was a confidential, friendly conversation, as I understood it, and I am not inclined to violate the confidence he reposed in me.

Q. Was he consulting you at the time as an attorney, and
332 is it what you as a lawyer understand to be a privileged communication on account of the relation of attorney and client subsisting between you at that time?

Ans. I did not understand at that time that he was consulting me as his attorney.

(By the counsel for the plaintiff:) I do not know what the conversation was nor the purport of it, but I am willing for the witness to state Mr. Beardsley's and his conversation about the matter.

(The plaintiff also consents to this.)

Q. You will now please to state the conversation so far as it related to the interest of the plaintiff in the property in controversy and to the memorandum agreement exhibited with his deposition in this case.

Ans. On the 2nd day of February, 1886, I think, in the depot in the town of Nashville, I had, as I have stated, a confidential conversation with the plaintiff, in which the question of his interest in the Arkansas and Louisiana railway was discussed. At that time he exhibited to me the memorandum of sale delivered to him by J. D. Beardsley and upon which this action was based. He told me that the matter had never been mentioned between himself and J. D. Beardsley since the memorandum had been delivered, and that he had always considered that he owned a third interest in the road and the construction contract; that he did not know how J. D. Beardsley regarded the matter, but that he was afraid that J. D. Beardsley did not view the matter as he did. I told him under the circumstances that he ought to go at once and see J. D. Beardsley and have a definite understanding with him and have their relative interests in the road settled. I asked him — he had ever stated to anybody that he owned an interest in the road. He said he had done so frequently. I told him that if he had never told anybody so that J. D. Beardsley must have spoken of it, for I had heard it as a rumor that

he, the plaintiff, owned an interest in the road, though I had never heard either him or J. D. Beardsley say anything about it. During the course of that conversation Mr. Paul Beards-
333 ley detailed to me fully his side of the case and all the surrounding circumstances. I was deeply impressed with the justness of his claim. I told him that while the directors of the company had contributed large amounts of money towards the construction of the road that they held their stock nominally, and it was a questionable in my mind whether the corporate existence of the company might not be destroyed, and if it were done I thought he and J. D. Beardsley would be held to be partners in the road.

Ques. Did he make any other statement to you that you remember in regard to the memorandum agreement?

Ans. In the same conversation my recollection is that he told me he expected J. D. Beardsley had forgotten giving him the memorandum.

Q. You stated in your examination-in-chief that the stock of the Washington and Hope railway was surrendered at the time the properties and franchises of that road were sold to the Arkansas and Indian Territory Company. Please state fully what arrangement, if any, was made in that transfer as well as in the transfer from the Arkansas and Indian Territory Company to the Arkansas and Louisiana Company for replacing or substituting the original stock held by the stockholders of the Washington and Hope railway, and whether the same was assented to by the stockholders.

Ans. As stated in my examination-in-chief, the Washington and Hope Railway Company was sold to the Arkansas and Indian Territory Railway Company for the sum of a hundred thousand dollars capital stock of the Arkansas and Indian Territory. That stock was to be issued and delivered to the holders of the stock in the Washington and Hope Railway Company for the purpose of replacing their stock, but the stock was in fact never issued. When the Arkansas and Indian Territory sold to the Arkansas and Louisiana the latter company assumed the debts and contracts of the former, with the further agreement to issue a hundred
334 thousand dollars of its paid-up capital stock to replace the stock of the Washington and Hope Railway Company, which had not been done by the Arkansas and Indian Territory Company. These arrangements were assented to by the stockholders and directors and carried out.

Q. For what purpose was the two hundred thousand dollars of stock issued by the Arkansas and Louisiana railway in 1883?

Ans. One hundred thousand dollars of it was issued for the purpose of carrying out the contract of the Arkansas and Indian Territory Company to replace one hundred thousand dollars in the Washington and Hope Railway Company. The other hundred thousand dollars was issued to pay for changing the gauge and material and work done on the road between Hope and Washington. Under the provisions of the construction contract one hundred shares of the first hundred thousand dollars of this stock was issued

in the name of P. F. Beardsley and delivered to J. D. Beardsley—for what purpose I do not know.

Q. To whom and in whose name was the stock that was issued under the construction contract issued?

Ans. It was issued in the name of J. D. Beardsley, to him, and delivered to him for work done under the construction contract.

Q. Had not the greater part or all of the money obtained by J. D. Beardsley from the Iron Mountain railway for construction purposes been gotten prior to June, 1883?

Ans. I think so.

Q. Then were you not mistaken when you stated in your examination-in-chief that J. D. Beardsley told you about the time the stock was issued, in June, 1883, that it was necessary to deposit the stock with the Iron Mountain people to procure money for the use of the road?

Ans. It is probable that I was mistaken in my recollection of what J. D. Beardsley told me when he directed me to issue the stock. He told me that he had assigned to Geo. C. Smith,
335 the private secretary of Cap. R. S. Hayes, a half interest in the construction contract, and he told me at the time that he asked me to indorse my certificate of stock that he wanted to deposit the certificates of stock of all directors with Cap. Hayes; that the stock of the directors — either party a controlling interest in the road, and he had it indorsed to himself, though it was never transferred on the books. The fact that the stock was issued on the 20th of June and the indorsement made on it on the 22nd of June leads me to the conclusion that his purpose of having the stock issued was to deposit it with Cap. Hayes under the assignment of the half interest of the construction contract instead of as collateral security, though I do not remember what he did state to me at the time the stock was issued. I think this conversation occurred about the time the stock was indorsed.

Q. What become of the stock subscriptions on the articles of association of the Arkansas and Louisiana and the Arkansas and Indian Territory railways? Were they ever paid, and were they more than nominal subscriptions?

Ans. So far as I know, none of them were ever paid except J. D. Beardsley's. How much of his was paid I do not know. The understanding was that stock should be issued to those of the stockholders in the Washington and Hope railway who had paid their subscriptions in full, and that the payments theretofore made by them should go in lieu of any further payments, it being desired to retain a sufficient number of stockholders to constitute a legal directory. Major J. D. Beardsley was relieving money and material from the Iron Mountain and using it in the construction of the Arkansas and Louisiana road, and I regarded all money and material put into the road by him as payments upon his stock subscription, no matter from what source it came, and it was with this view that I joined in the affidavit that one thousand dollars per mile of the capital stock of the contemplated road had been subscribed and five per
336 cent. thereof had been actually paid in. No stock was ever issued under the subscription referred to, I think.

Redirect:

The length of the Arkansas and Louisiana Railway Company as completed is about twenty-six miles, and the capital stock, as fixed by the articles of association, is one million two hundred thousand dollars for the entire length of the road as completed. The board of directors and stockholders have authorized an issue of stock to the amount of twenty thousand dollars per mile and bonds to the amount of fifteen thousand dollars per mile. Exhibit E, attached hereto, is a copy of the resolution authorizing said issue of stock and bonds.

Q. At the time you had the conversation in the Nashville depot with Paul Beardsley detailed in your cross-examination had there not then arisen some differences between the two Beardsleys?

Ans. Paul Beardsley told me in that conversation that his family and J. D. Beardsley's family were then having some trouble or disagreements. I do not remember whether he stated that he and J. D. Beardsley were having any trouble. I was not Paul Beardsley's attorney and never heard of any trouble or dispute between the parties until the conversation between Paul Beardsley and myself mentioned in my cross-examination.

Further the deponent saith not.

R. B. WILLIAMS.

337 EXHIBIT "A."

WASHINGTON, ARK., *March 7th*, 1882.

This being the day fixed by the by-laws of this company for a regular meeting of the board of directors, therefore the board met at the office of A. B. & R. B. Williams, in the town of Washington, in the county of Hempstead, in the State of Arkansas.

Present: W. H. Carruth, president; R. B. Williams, secretary; Thomas H. Simms, treasurer; J. D. Beardsley, superintendent, and directors, W. P. Hart, A. B. Williams, H. B. Holman, J. K. Jones, and J. D. Conway.

Director A. B. Williams, chairman of the committee heretofore appointed to examine the railroad, road-bed, etc., submitted a report to the board in writing, which, after having been carefully read and duly considered, was, on motion of J. D. Conway, received and unanimously adopted and ordered to be spread upon the records of the company, and said committee was discharged.

On motion of A. B. Williams, the following resolution was unanimously adopted, to wit:

Whereas the committee appointed by the board of directors has examined the road-bed, tracks, culverts, bridges, turn-outs, rolling-stock, etc., of the Washington and Hope railroad, and has reported thereon: Therefore

Resolved, That it is the sense of this board that said road has been completed according to the contract entered into with J. D. Beardsley, and that the road was so completed on the 1st day of Jan., 1881, and is now received by this board as of that date.

The president then submitted to the board an agreement written and signed by J. D. Beardsley which is in the words and figures following, to wit:

"WASHINGTON, ARK.

Mr. W. H. Carruth, president.

DEAR SIR: Referring to the deficiency in the ten-thousand-dollar bonus which the president and directors of the Washington and Hope Railway Company undertook to make up, as set forth in
338 their contract with me for the construction of the said road, I have to say: I expect the president and directors to see that the lands donated to the road by General Royston and others are scriptions the road is equitably entitled to. Beyond this I do not deeded, and also to use their best endeavors to secure whatever subexpect anything more from them, and I hereby relinquish any claim for the amount deficient on the bonus.

J. D. BEARDSLEY."

EXHIBIT "B."

This indenture, made and executed on the 11th day of June, A. D. 1880, by and *from* the Washington and Hope Railroad Company, a corporation duly incorporated under the laws of the State of Arkansas, having existence in the county of Hempstead, in said State, and J. D. Beardsley, of the town of Cairo, in the State of West Va., party of the first part hereto, under and with the St. Louis Bolt and Iron Company of the city of St. Louis, in the State of Missouri, party of the second part hereto:

Whereas the said party of the second part hath agreed and promised to furnish unto the said party of the first part during the present month of June and the next following month of July certain quantities of railroad iron, bolts, and fastenings, to be used upon the said Washington and Hope railway, at prices now already agreed upon between said parties, amounting in value *to* said agreed-upon prices to the sum of fifteen thousand dollars, for and in consideration whereof the said parties of the first part have agreed and promised to pay the said sum of fifteen thousand dollars at the times and in the manner following, to wit: The sum of five thousand dollars at the expiration of sixty days from the first day of July next, with interest thereon, at the rate of eight per cent. per annum, from said first day of July next until paid; the
339 further sum of five thousand dollars at the expiration of ten months from the first day of July next, with interest thereon, at the rate of eight per cent. per annum, from said first day of July next until paid; provided, however, that said parties of the first part, at their option, may extend said time of payment for a longer period of four months at the same rate of interest; and the further sum of five thousand dollars at the expiration of ten months from the first day of July next, with interest thereon, at the rate of eight per cent. per annum, from the said first day of July next until paid: Provided, however, that said parties of the first part, at their option, may extend said time of payment for a period of nine months at

the same rate of interest: Now, therefore, this indenture witnesseth: That the said parties of the first part, for and in consideration of the stipulations of the said parties of the second part and for the better securing the said several sums of money, together with all interest thereon promised and agreed to be paid, as hereinbefore stated, in the manner and form as aforesaid, have granted, bargained, sold, demised, released, and conveyed, and by these presents do grant, bargain, sell, demise, release, and convey, unto the said party of the second part, heirs and assigns, the road, road-bed, and rolling stock of the said Washington and Hope railway; to have and to hold the same, together with all the privileges and appurtenances thereto belonging, unto the said party of the second part, heirs and assigns, forever: Provided always, nevertheless, and it is hereby expressly agreed and understood, that should the said parties of the first part pay or cause to be paid unto the said party of the second part, heirs or assigns, the said several sums of money hereinbefore mentioned in the manner and at the times hereinbefore stated, then and in that event this indenture, together with the estate herein created, shall be absolutely null and void, anything herein contained to the contrary notwithstanding; otherwise to remain in full force and virtue; and provided further that if required so to do by the said party of the second part the said John D. Beardsley, one of the parties of the first part hereto, shall make, execute, and deliver unto the said party of the second part, as additional security for said debt, his three several promissory notes in writing, each for the sum of five thousand dollars and as of date of July 1st, 1880, and each due and payable at the times and in the manner as the said several sums hereinbefore mentioned, with the same rate of interest and subject to the same conditions and provisos as to options of payment.

340

In testimony whereof W. H. Carruth as president and Robert B. Williams as secretary of the Washington and Hope Railway Company have, by order of the board of directors of said company, hereunder set their hands and affixed the seal of said company on behalf of said company; and the said J. D. Beardsley, for himself and in his own behalf, hath hereunto set his hand and affixed his private seal on this the date first above written.

WILLIAM H. CARRUTH, *President.*
R. B. WILLIAMS, *Secretary.*
J. D. BEARDSLEY. [SEAL.]

STATE OF ARKANSAS, }
Hempstead County. }

Be it remembered that on this 11th day of June, 1880, before me, the duly elected, commissioned, qualified, and acting clerk of the circuit court within and for the county and State aforesaid, personally appeared W. H. Carruth, Robert B. Williams, J. D. Beardsley, each to me well known, and each for himself acknowledged and stated that he had executed the foregoing instrument of writing for the purposes and considerations and by virtue of the power and authority therein mentioned and set forth; and I do hereby so certify.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of this court on this the date above written.

THOMAS H. SIMMS, *Clerk.* [SEAL.]

341 "C."

UNITED STATES OF AMERICA, }
State of Arkansas. }

This indenture, made and executed in duplicate this the 1st day of Nov., A. D. 1882, by and between the Arkansas and Indian Territory Railroad Company, a corporation created and organized under the laws of the State of Arkansas, of the first part, and the Mercantile Trust Company, a corporation created and organized under the laws of the State of New York, party of the second part, witnesseth: That whereas said party of the first part, the said Arkansas and Indian Territory Railroad Company, is the owner of about ten miles of railroad extending from the town of Hope, on the St. Louis, Iron Mountain and Southern railroad, in a northwestern direction, to the town of Washington, all within the county of Hempstead, in the State of Arkansas, which is a narrow-gauge road, and is also the owner of the right to construct, maintain, own, and operate an extension of the said railroad for the public use in conveyance of persons and property from the said town of Washington, in a northwestern direction, to a point on the line of the Indian Territory, through the counties of Hempstead, Howard, and Sevier, in said State of Arkansas, altogether a distance of sixty miles, more or less, together with all the property, rights, privileges, immunities, franchises, and other things guaranteed by the laws of the said State of Arkansas in such cases; and whereas the said party of the first part desires to change its narrow-gauge road to a standard-gauge railway, and to extend, repair, complete, equip, and operate the same from or near the line of the Indian Territory to or near the town of Hope, a distance of about sixty miles, more or less, as such standard-gauge railway, to enable it to do which it is necessary for the first party to borrow from time to time large sums of money; and whereas the said party of the first part is duly authorized by law to borrow such sums of money as may be necessary for such and other purposes, and to issue its bonds for any amount so borrowed

342 and to mortgage all its property, incomes, and franchises now owned or to be hereafter acquired or any part thereof to secure the payment of such bonds to an amount not exceeding its authorized capital stock; and whereas the authorized capital stock of the said party of the first — is one million dollars and the directors and stockholders of the said first party have duly authorized and empowered the said first party, for the purposes aforesaid, to make, issue, and negotiate a series of three hundred and fifty first-mortgage bonds of one thousand dollars each, not exceeding the sum of three hundred and fifty thousand dollars ($350,000), numbered consecutively from one to three hundred and fifty, inclusive, and dated on and bearing interest from Nov. 1st, A. D. 1882, at the rate of six

per cent. per annum, payable semi-annually in gold coin, on the first days of Nov. and May of each and every year, upon the presentation and surrender of the respective coupons thereunto annexed, and the principal to become due and payable thirty years after their date and both principal and interest of said bonds to be payable in gold coin at the financial agency of the said second party in the city of New York; and whereas the said directors and stockholders of the said first party have further authorized and directed that the said bonds and interest coupons should be secured by a first mortgage or deed of trust on the said railway, including the said extension as aforesaid and all its privileges, rights, franchises, real estate, incomes, and other property now owned and which may be hereafter acquired in such manner and form as to legally bind the same for the payment of said bonds and interest, and that said bonds and said mortgage or deed of trust should be executed on the part and in behalf of said first party by its president and secretary, and that its corporate seal should be thereto affixed, and the coupons annexed to said bonds should be executed with the engraved signature of its secretary, and have further authorized and empowered the president and secretary to make, execute, and deliver the said bonds, coupons, and mortgage or deed of trust in such manner and form and at
343 such times and places as they may deem proper and expedient for carrying out the purposes and objects hereinbefore stated; and whereas, under and by virtue of the power and authority aforesaid, the said first party, by its president and secretary, is to make and execute said three hundred and fifty bonds, to be numbered consecutively from one to three hundred and fifty, inclusive, each of which said bonds, except as to the number, is as follows:

UNITED STATES OF AMERICA, *State of Arkansas.*

Arkansas and Indian Territory Railway Company First-Mortgage Bond

$1,000. No. —.

Thirty years after date, for value received, the Ark. and Indian Territory Railway Co. promise to pay, in gold coin of the United States of America of the present standard value, to the holder of this bond, at its financial agency in the city of New York, one thousand dollars, and also interest thereon at the rate of six per cent. per annum, payable semi-annually in like gold coin on the first days of Nov. and May of each year on the presentation and surrender of the respective interest coupons hereto annexed at the financial agency aforesaid.

This bond is one of a series of three hundred and fifty bonds, each of the denomination of one thousand dollars, numbered from one to three hundred and fifty, inclusive, the payment of the principal and interest of which is secured by an indenture of mortgage or deed of trust of even date herewith conveying to the Mercantile Trust Company of New York, in trust for the holders of said bonds,

all the railway, rolling stock, equipment, franchises, property, and incomes of said company now held and which may hereafter be acquired. If default shall be made in the payment of any semi-annual installment of interest on this bond or on any part thereof when the same shall become due and be demanded and shall remain unpaid for sixty days after such demand the principal of this bond shall become due and payable at once. This bond is to be valid only when authenticated by a certificate indorsed thereon, signed by the aforesaid trustees, to the effect that it is one of three hundred and fifty bonds of one thousand dollars each, secured by and
344 mentioned in the mortgage or deed of trust hereinbefore mentioned, and that the said bonds have been issued to an amount not exceeding the sum of five thousand dollars per mile for every mile of the said railway of the said railway company which has been actually constructed and ready to put in operation. This bond shall pass by delivery or transfer on the books of said railway company in the city of New York after registration of ownership certified hereon by the transfer agent of said company. After such registration no further transfer except on the books of the company shall be valid unless transferred to bearer on said books, after which this bond shall pass by delivery as at first, but shall continue, subject to registration and transfer to bearer successively, at the option of each holder.

In witness whereof the said company has caused its corporate name to be hereto signed by its president and its corporate seal to be hereto affixed, attested by its secretary, and the annexed interest coupons to be executed with the engraved signature of its secretary this the first day of Nov., A. D. 1882.

ARKANSAS AND INDIAN TERRITORY RAILWAY COMPANY,
By H. B. HOLMAN, *President.*
Attest: R. B. WILLIAMS, *Secretary.*

$30.00. (*Form of Coupon or Interest Warrant.*) $30.00.

Arkansas and Indian Territory Railway Company will pay to the bearer thirty dollars in gold coin at its financial agency, in the city of New York, on the first day of blank, being six months' interest due on its first-mortgage bonds.

No. —. R. B. WILLIAMS, *Secretary.*

Each of said bonds shall have endorsed thereon a certificate signed by the second party as follows: "It is hereby certified the Arkansas and Indian Territory Railway Company has executed to the Mercantile Trust Company of New York a mortgage or deed of trust as described in the within bond; that this bond is one of a series of three hundred and fifty bonds of one thousand dollars each, secured by and mentioned in said deed of trust, and that no more
345 bonds have been certified to by the undersigned than are authorized by said deed of trust."

And none of said bonds shall be valid or be secured by this mortgage or deed of trust until said certificate, signed as aforesaid, is indorsed thereon.

Now, therefore, this indenture witnesseth: That the said first party, for and in consideration of the premises and the further consideration of one dollar to it paid by the said second party, the receipt of which is hereby acknowledged, and for the purpose of securing payment of the principal and interest of said bonds and each of them as and when they become severally due and payable, as hereinbefore provided, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, sell, bargain, convey, and confirm, unto the said second party, as trustee and in trust, and to its successor or successors in said trust all and singular the railways, railway property, income, right, and franchises of the said first party, and described as follows, to wit: All the railway belonging to the said first party, commencing at a point on the St. Louis, Iron Mountain and Southern railway at or near the town of Hope, in the county of Hempstead, in the State of Arkansas, and extending thence in a northwestern direction to the town of Washington, in the same county and State, a distance of about ten miles, and from said town of Washington in the same direction to the line of the Indian Territory, a distance of about fifty miles, through the counties of Hempstead, Howard, and Sevier, in said State of Arkansas, the said railway being all the constructed railway now owned by the said first party and all which it is authorized to construct, the same being the line heretofore known and hereafter to be known as the Arkansas and Indian Territory Railway Company, as the same is now and hereafter shall be located, together with all the appurtenances of every description, including rights of way, station-houses, depots, machine shops, machinery, road-bed, superstructure, ties, bridges, culverts, water tanks, turn-tables, switches, side tracks, spurs, additions, branches, iron and all material, tools, and implements used in the construction and maintenance of the said railway, with all its privileges, rights, franchises, real
346 estate and other property, and the revenues, tolls, income, rents, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity, of the said first party in and to the same and any and every part thereof now owned or which may hereafter be acquired; to have and to hold all of the aforesaid railways, with all the privileges, rights, franchises, real estate, appurtenances, incomes, unto the said second party and its assigns and to their successors forever, in trust, nevertheless, for the equal *pro rata* benefit and security of all and every the persons or corporations who may be or become holders of any of the bonds issued hereunder without any preference or priority of any one bond over another or by reason of priority of time of issuance or of negotiations thereof or otherwise, and for the uses and purposes therein declared and expressed.

And the said railway company, party of the first part, further covenants that it will not issue, negotiate, sell, or otherwise dispose of the bonds to be issued hereunder in any manner inconsistent with the

provisions of these presents and its covenants and agreements in that behalf herein contained, and that it will apply the proceeds thereof exclusively for the purposes herein stated and provided for; and for the purpose of securing to the holders of any of the said bonds to be issued hereunder, that none of said bonds shall be issued except as herein provided, it is hereby stipulated and agreed by the said party of the first part that the said trustees herein, or its successor or successors in said trust, shall certify and deliver said bonds only as follows: It shall be the duty of the trustee herein to deliver from time to time to the party of the first part *upon* a certified copy of the resolution of the board of directors of the said party of the first part specifying the purpose or purposes for which said bonds are required, which said resolution shall fully protect the said trustee from liability in respect of the delivery of said bonds. Bonds shall be issued hereunder and delivered by the trustee herein at not exceeding the rate of five thousand dollars per mile for every
347 mile of the railway of said railway company which has been actually constructed and ready to be put in operation, as sections of five miles or more are completed, upon filing with said trustees, under oath of the president, vice-president, or chief engineer of the party of the first part — to the effect that so much of the railway of said railway company has been properly constructed and completed and is in good condition and repair and ready for use, the term mile to mean each mile of single-track railway, with the necessary sidings; and it is agreed between the parties hereto and made a part of the contract with the holders of the bond secured hereby that the said trust company, the trustee herein, shall not be required to look beyond the resolution of the board of directors of the party of the first part and the certificate or certificates of the chief engineer, president, or vice-president, as the case may be, as herein provided, and shall not be responsible in any event for any act done in pursuance of such resolution and certificate or certificates. This indenture is made upon the express condition that if the said first party shall well and truly pay or cause to be paid to the holder or holders of said bonds the principal sums of money therein mentioned according to the true intent and meaning thereof, with the interest thereon according to the terms and conditions thereof, together with all necessary and proper costs incident to this trust, then the lien or incumbrance hereby created for the security and payment thereof and all the estate and interest of the said second party in the property aforesaid shall cease and determine, and at the request of the said first party or its successors or its assigns this mortgage or deed of trust shall be satisfied and a release or satisfaction thereof shall be entered of record; but if the said first party shall fail to pay or cause to be paid the interest on any part of said bonds secured hereby or any part thereof for sixty days after the same shall become due and payable and after demand made for the payment of the same
at the financial agency of the aforesaid in the city of New York,
348 or if the principal sum of any of the said bonds when and as the same shall become due and payable shall not be paid for the period of sixty days after demand made for the payment

of the same at said financial agency in the city of New York as aforesaid, the said second party or its successor or its successors in this trust is hereby authorized and required, upon the written request of the holders of the said bonds to the amount of one-third of all of said bonds then outstanding, the principal or interest or any part thereof of which shall then be in arrears or unpaid as aforesaid, to offer for sale the said railways, with all the rights, franchises, and property herein conveyed, as an entirety, and to sell the same at public vendue to the highest bidder at the court-house in the city of Little Rock, first giving eight weeks' notice thereof and of the time, place, and terms of such sale by notice published at least once each week in at least one paper published in each of the cities of Little Rock and New York, and otherwise as may be required by law, the said trustees being hereby authorized to adjourn such sale from time to time in their discretion, and if so adjourned to make the sale without further notice at the time and place to which the same may be so adjourned.

And in case of any foreclosure sale or of any sale made under any of the provisions of this deed of trust the purchaser or purchasers thereat shall be entitled, in making settlement for and payment of the purchase-money therefor, to deliver to the then trustee, toward the payment of such purchase-money, any of the said bonds and interest coupons secured hereby and held by such purchaser or purchasers, counting such bonds and interest coupons for such purpose at a sum not exceeding that which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds and interest coupons as his or their share and proportion in that character of such net proceeds of sale, after allowing for the proportion of payment which may be required in cash for the costs and expenses of the sale, and which proportion of cash payment shall be determined and announced by the then trustees previous to
349 any such sale; and if such proportionate sum shall be less than the amount of such bonds or interest coupons to make such settlement by receipting thereon for the amount to be credited thereupon; and such trustees, its successor or successors, are hereby also irrevocably empowered, on such sale being consummated, to make, execute, and deliver any and all conveyance or conveyances that may be necessary to completely transfer and convey all the property hereby mortgaged to the purchaser or purchasers, who may immediately enter upon and take possession of the same, and the benefit and equity of redemption of the said Arkansas and Indian Territory Railway Company therein shall be forever barred, and all recitals in such conveyances contained in relation to the execution of this trust shall be *prima facie* evidence thereof.

And the said second party, after the payment of the costs and expenses of this trust and sale, including such just allowances and counsel fees and all other expenses, advances, or liabilities made or incurred by the trustee in respect to the mortgage property or in performance of any of the trusts herein contained, together with all reasonable compensation for services in the execution of this

trust and the discharge of the duties hereby devolved, shall apply the remaining proceeds of the said sale to the payment of the interest which shall have at that time accrued upon said bonds, or so many of them as shall have been issued and be then outstanding, equally and ratably until all such interest is fully paid, and afterwards apply the remainder to the payment of the principal of said bonds equally and ratably until such principal shall be fully paid, and shall then pay over the surplus, if any, to the said first party, its successors or assigns. It is further mutually understood and agreed that the actual possession, control and management of said railways and property herein conveyed, with all and singular the appurtenances thereunto belonging, shall be and remain with the said first party, its successors and assigns, so long as there shall be no default in the payment of interest or principal in the manner aforesaid
350 of the said bonds hereby secured; and it is further provided and agreed that the said second party or any successor to the said party to the trust herein created may resign and discharge themselves from said trusts by giving twenty days' notice in writing to that effect to the said first party, and on receipt of such notice, or in case there shall at any time become a vacancy in the trusteeship herein granted to the said second party by resignation, death, refusal, or inability to act, or from any other cause, then the acting president of the first part or, if he fails or refuses to act, any holder of any of the bonds hereby secured may cause four weeks' notice to be given in at least one newspaper published in each of the cities of St. Louis and New York, by publication therein for four weeks, that such vacancy does exist, and designating a time and place in the city of New York for the holders of the bonds hereby secured to meet and choose a successor or successors to fill such vacant trusteeship, and at such meeting the persons holding or representing a majority of the bonds then and there represented may choose and elect one or more persons or a corporation to fill said vacancy and to be the successor of the said party or parties of the trust herein created; and such appointment or election shall be designated and certified by an instrument in writing, signed and acknowledged by the chairman of such meeting in the form required for the acknowledgment of deeds for record by the laws of Arkansas, and shall deliver the same to the president of the first party, or may file the same for record in the offices of the respective recorders of the respective counties in said State of Arkansas, through which said road may run, and from the last date of such delivery or filing the person or persons or corporation so appointed shall be fully vested with all the powers or trusts herein given to the said second party as fully as if he or they or it were originally made parties of the second part herein, and like proceedings may be had as aforesaid and with like effect whenever and as often as a vacancy may exist in the trusteeship herein vested in the said second party.

351 And the said first party agrees to pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be lawfully imposed upon the property herein conveyed, and in case of the default of the said first party

in this behalf the said second party or its successors in this trust may pay and discharge the same; and the sum so paid, with interest at six per cent. per annum in gold coin, shall be paid out of the sale of said property and franchises when made as hereinbefore provided; and the said first party, in consideration of the aforesaid, further agrees with the second party and its successors to execute and deliver such further deeds, conveyances, and assurances as may be necessary and proper to carry — the purposes and object of this instrument; and it is further agreed that the said second party and its successors in this trust shall be accountable for only reasonable care and diligence in the performance of the trust hereby created, and said second party accepts the trust created and declared hereby, and agrees to discharge the same in pursuance of the provisions in that behalf herein contained.

In witness whereof the Arkansas and Indian Territory Railway Company, the said first party hereto, has caused its corporate name to be hereunto signed by its president and its corporate seal to be hereunto affixed, attested by its secretary; and the said second party has signified its acceptance of the trusteeship herein created by likewise — its corporate name to be hereunto signed by its president, and its corporate seal, attested by its secretary, to be hereunto affixed the day and year first above written.

ARKANSAS AND INDIAN TERRITORY
RAILWAY COMPANY,
By H. B. HOLMAN, *President.*

Attest:
[SEAL.] R. B. WILLIAMS, *Secretary.*

THE MERCANTILE TRUST COMPANY.
By its PRESIDENT AND SECRETARY,

(The above instrument was duly acknowledged by the parties of the first and second parts, through their proper officers, before officers qualified by law to take acknowledgement.)

352 EXHIBIT "D."

UNITED STATES OF AMERICA, }
State of Arkansas. }

This indenture, made and executed in duplicate this the 2nd day of July, A. D. 1883, by and between the Arkansas and Louisiana Railway Company, a corporation created and organized under the laws of the State of Arkansas, party of the first part, and the Mercantile Trust Company, a corporation created and organized under the laws of the State of New York, party of the second part, witnesseth:

That whereas the said party of the first part, the Arkansas and Louisiana Railway Company, is the owner of about thirteen miles of railway, now constructed and in operation, extending from the town of Hope, on the St. Louis, Iron Mountain and Southern railway in a northwestern direction, to and beyond the town of Wash-

ington, all within the county of Hempstead, in the State of Arkansas, and is also the owner of the right to construct, maintain, own, and operate an extension of the said railway for public use in the conveyance of persons and property from the said town of Washington in a northwestern direction to a point on the line of the Indian Territory through the counties of Hempstead, Howard, and Sevier, in said State of Arkansas, altogether a distance of about sixty miles, more or less, together with all the property, rights, privileges, immunities, franchises, and other things guaranteed by laws of the State of Arkansas in such cases; and whereas the party of the second part, the said Arkansas and Louisiana Railway Company, is also authorized under its franchise to construct, maintain, own, and operate an extension of the aforesaid line of railroad for public use in the conveyance of persons and property from the said town of Hope, on the line of the St. Louis, Iron Mountain and Southern Railway Co., in a southeasterly direction by or near the town of Magnolia, and thence to the line between the State of Arkansas and Louisiana, terminating on said line at or near the township line between townships nineteen and twenty south, in range
353 nineteen west; which said last-named extension will pass through portions of the counties of Hempstead, Nevada, and Columbia, and will be about sixty miles in length, more or less, together with all the property, rights, privileges, immunities, franchises, and other things guaranteed by the laws of the State of Arkansas in such cases; and whereas said party of the first part desired to extend, complete, and equip and operate its road from or near the said line of the Indian Territory to the said town of Hope, a distance of about sixty miles, more or less, as a standard-gauge railroad, and also desired without delay to construct, equip, and operate its said line of railroad from the said town of Hope to the said line between the States — Louisiana and Arkansas, to enable it to do so *which* it is necessary for the said first party to borrow from time to time large sums of money; and whereas said party of the first part is duly authorized by law to borrow such sums of money as may be necessary for such and other purposes, and to issue its bonds for any amount so borrowed, and to mortgage all its property, real and personal, income, rights, and franchises now owned or to be hereafter acquired or any part thereof to secure the payment of such bonds to an amount not exceeding its authorized capital stock; and whereas the authorized capital stock of the party of the first part is two million four hundred thousand dollars, and the directors and stockholders of the said first party have duly authorized and empowered the said first party for the purposes aforesaid to make, issue, and negotiate a series of eighteen hundred first-mortgage bonds of one thousand dollars each, not exceeding the sum in the aggregate of one million eight hundred thousand dollars, numbered consecutively from one to eighteen hundred, inclusive, and dated on and bearing interest from July 2nd, A. D. 1883, at the rate of five per cent. per annum, payable semi-annually in gold coin of the United States of or equal in weight or fineness to the present standard of value, on the 1st

days of Jan. and July of each year and every year, upon the
354 presentation and surrender of the respective coupons thereto annexed, and the principal thereof to become due and payable thirty years after their date, and both principal and interest of said bonds to be payable in like gold coin at the financial agency of the said first party, in the city of New York; and whereas the directors and stockholders of the said first party are further authorized and directed that the said bonds and interest coupons shall be secured by a first mortgage or deed of trust on all the said railways, with their appurtenances and all its privileges, rights, franchises, real estate, incomes, and all other property now owned and which may be hereafter acquired by the said Arkansas and Louisiana Railway Company in such manner and form as to legally bind the same for the payment — and interest of said bonds when due, and that said mortgage or deed of trust shall be duly executed on the part and on behalf of the said first party by its president, and that its corporate seal shall be thereto affixed attested by its secretary, and that said bonds shall be duly executed in behalf of the said first party by its said president by and under the seal of the said first party attested by its treasurer, and that the coupons annexed to said bonds shall be executed with the engraved signature of its treasurer; and have further authorized and empowered the president and secretary to make, execute, and deliver the said mortgage or deed of trust, and have likewise authorized the president and treasurer to make — execute the said bonds and coupons in such manner and form and at such time and places as they may deem proper and expedient for carrying out the purposes and objects hereinbefore stated; and whereas under and by virtue of the power and authority aforesaid the said first party, by its president and treasurer, is to make and execute said eighteen hundred bonds, to be numbered consecutively from one to eighteen hundred, inclusive, each of which said bonds, except as to the number, is substantially as follows:

355 UNITED STATES OF AMERICA, *State of Arkansas.*

No. —. $1.000.

Arkansas and Louisiana Railway First-Mortgage Bond.

Thirty years after date, for value received, the Arkansas and Louisiana Railway Company promises to pay, in gold coin of the United States of America of or equal to the present standard of value, to the holder of this bond, at its financial agency, in the city of New York, one thousand dollars, and also interest thereon at the rate of five per cent. per annum, payable semi-annually in like gold coin, on the first days of Jan. and July of each year, on the presentation and surrender of the respective interest coupons hereto annexed at the financial agency aforesaid.

This bond is one of a series of eighteen hundred bonds, each of the denomination of one thousand dollars, numbered from one to eighteen hundred, inclusive, the payment of the principal and inter-

est of which is secured by an indenture of mortgage or deed of trust of even date herewith, conveying to the Mercantile Trust Company of New York, in trust for the holders of said bonds, all the railways, with their appurtenances, railway property, rolling stock, equipments, rights, franchises, real estate, and other property and income of said railway company now held and which may hereafter be acquired. If default shall be made in the payment of any semi-annual installment of interest on this bond or on any part thereof when the same shall become due and be demanded, and shall remain unpaid *after* six months after such demand, the principal shall become due and payable at once. This bond is to be valid only when authenticated by a certificate indorsed hereon, signed by the aforesaid trustees, to the effect that it is one of a series mentioned in a mortgage herein referred to.

This bond shall pass by delivery or it may be transferred on the books of said railway company in the city of New York after registration of ownership certified hereon by the transfer agent of the said company. After such registration no further transfer except on the books of the company shall be valid, unless transferred
356 to bearer on said books, after which said bonds shall pass by delivery, as at first, but shall continue subject to registration and transfer to bearer successively, at the option of each holder.

In witness whereof the said Arkansas and Louisiana Railway Company has caused its corporate name to be hereto signed by its president and its corporate seal to be hereto affixed, attested by its treasurer, and the annexed interest coupons to be executed with the engraved signature of its treasurer this 2nd day of July, 1883.

ARKANSAS AND LOUISIANA RAILWAY COMPANY,
By W. H. CARRUTH, *Pres'd't.*
Attest: R. B. WILLIECS, *Secretary.* [SEAL.]

(*Form of Coupon or Interest Warrant.*) $25.00

The Arkansas and Louisiana Railway Company will pay to the bearer twenty-five dollars in gold coin at its financial agency, in the city of New York, on the first day of ——, being six months' interest then due on its first-mortgage bonds.

No. —.

W. H. CARRUTH, *Treasurer.*

Each of the said bonds shall have indorsed thereon a certificate signed by the said second party as follows:

Trustee's Certificate.

It is hereby certified that this bond is one of a series of bonds mentioned in the mortgage referred to.

THE MERCANTILE TRUST COMPANY,
By —— ——, *President.*

And none of said bonds shall be valid or be secured by this mortgage or deed of trust until said certificate, signed as aforesaid, is indorsed thereon. Each of said bonds has coupons attached for the installments of semi-annual interest hereinbefore provided for: Now, therefore, this indenture witnesseth: That the Arkansas and Louisiana Railway Company, the said first party, for and in consideration of the premises and for the further consideration of one dollar to it paid by the Mercantile Trust Company, the said second party, the receipt of which is
357 hereby acknowledged, and for the purpose of securing the payment of the principal and interest of said bonds and each of them as and when they become severally due and payable, as hereinbefore provided, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm, unto the Mercantile Trust Company, the said second party, as trustee and in trust, and to its successor and successors in said trust, all and singular the railways, with their appurtenances, railway property, rolling stock, equipments, rights, franchises, real estate, and all other property and incomes of the said first party now held and which may hereafter be acquired and described as follows: All the railway, constructed and to be constructed, belonging to the said first party, commencing at a point on the St. Louis, Iron Mountain and Southern railway at or near the town of Hope, in the county of Hempstead, in the State of Arkansas, and extending thence in a northwestern direction to and beyond the town of Washington, in the same county and State, a distance of about thirteen miles, and thence in the same direction to the line of the Indian Territory, a distance of about forty-seven miles, through the counties of Hempstead, Howard, and Sevier, in said State of Arkansas; the said railway from Hope to and beyond the town of Washington, a distance of thirteen miles, being all the constructed railway now owned and in operation by said first party, and being a part of the line heretofore known and hereafter to be known as the Arkansas and Louisiana railway, as the same is now and hereafter shall be located; all the railway hereafter to be constructed belonging to the said first party, and also to be known as a part of the Arkansas and Louisiana railway, commencing at a point on the St. Louis, Iron Mountain and Southern railway at or near the said town of Hope, in the State of Arkansas, and extending thence in a southeasterly direction by or near the town of Magnolia to the line between the States of Louisiana and Arkansas, a distance of about sixty miles, through the counties of Hempstead, Nevada, and Columbia, in the State
358 of Arkansas, the whole constituting a line constructed and to be constructed about one hundred and twenty miles in length, extending from a point on the line of the Indian Territory, in the county of Sevier aforesaid, through the said county of Sevier, the counties of Howard, Hempstead, Nevada, and Columbia, to a point on the boundary line between the States of Arkansas and Louisiana, together with the appurtenances of every description, including rights of way, station-houses, engine-houses, car-houses, freight-houses, wood-houses, warehouses, depots, depot grounds, machine

shops, workshops, machinery, road-bed, superstructures, erections, and fixtures, ties, bridges, culverts, fences, water-tanks, turn-tables, switches, tracks, side tracks, spurs, additions, branches, iron, timber, wood, fuel, and other material, tools, and implements used in the construction, maintenance, and operation of said railways; also all locomotives, tenders, cars, and other rolling stock and equipments, with all the privileges, rights, franchises, real estate, and other property, and the revenues, tolls, incomes, rents, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, as well in law as equity, of the said first party in and to the said railways, with their appurtenances, and any and every part thereof, now owned or which may hereafter be acquired; to have and to hold all and singular the aforesaid railways, railway property, rolling stock, and equipment, with all their equipments, rights, franchises, real estate, appurtenances, income, and other property unto the said second party and its assigns and to their successors forever; in trust, nevertheless, for the equal *pro rata* benefit and security of all and every the persons or corporations who may be or become holders of any of the bonds issued hereunder, without any preference or priority of any one bond over another either by reason of priority of time of issue or of negotiation thereof, or otherwise, and for the uses and purposes herein declared and expressed; and the Arkansas and Louisiana Railway Company, the said party of the first part, further covenants that it will not issue, negotiate, sell, or otherwise dispose of any of the
359 bonds issued hereunder in any manner inconsistent with these presents and its covenants and agreements in that behalf herein contained, and that it will apply the proceeds thereof exclusively for the purposes herein provided for; and for the purpose of securing to the holders of any of the said bonds to be issued hereunder that none of said bonds shall be issued except as herein provided, it is hereby stipulated and agreed by the said party of the first part that the said trustee herein or its successor or successors in said trust shall certify and deliver said bonds only as follows: It shall be the duty of the trustee herein to deliver said bonds from time to time to the party of the first part upon a certified copy of a resolution of the board of directors of the said party of the first part specifying the purpose or purposes for which said bonds are required, which said resolution shall fully protect the said trustee from liability in respect to delivery of said bonds. Bonds shall be issued hereunder and delivered by the trustee herein at not exceeding the rate of fifteen thousand dollars per mile for every mile of the railroad of said railway company which has been actually constructed and ready to be put in operation, as sections of five miles or more are completed, upon filing with said trustee a certificate under oath of the president, vice-president, or chief engineer of the party of the first part to the effect that so much of the railway company has been properly constructed and completed and is in good condition and repair and ready for use; the term mile to mean each mile of single-track railroad, with the necessary sidings; and it is agreed between the parties hereto and made part of the contract with the

holders of the bonds secured hereby that the said Mercantile Trust Company, the trustee herein, or the successor or the successors in this trust shall not be required to look beyond the resolution of the board of directors of the party of the first part and the certificate or certificates of the engineer, president, or vice-president, as the case may be, as herein provided, and
360 shall not be responsible in any event for any act done in pursuance of such resolution and such certificate or certificates, and the said railway company further covenants that it will at all times hereafter, as long as any of the bonds to be issued hereunder shall be outstanding, keep an agency in the city of New York, and that it will pay the principal and interest of said bonds at the times and in the manner therein provided, and generally do and perform all acts and things, promises and covenants, in this indenture on its part to be done and performed. This indenture is made upon the express condition that if the said party shall well and truly pay or cause to be paid to the holder or holders of said bonds the principal sums of money therein mentioned according to the true intent and meaning thereof, with the interest thereon according to the terms and conditions thereof, together with all necessary and proper cost incident to this trust, then the lien or incumbrance hereby created for the security thereof and all the estate and interest of the said second party in the estate aforesaid shall cease and determine, and at the request of the first party or its successors or its assigns this mortgage shall be satisfied and a release and satisfaction shall be entered of record; but if the said first party shall fail to pay or cause to be paid the interest of any of said bonds secured hereby or any part thereof for six months after the same shall become due and payable, and after demand made for the payment of the same at the financial agency of the party aforesaid, in the city of New York, or if the principal sum of any of the said bonds when and as the same shall become due and payable shall not be paid for a period of six months after demand made for the payment of the same at said financial agency, in the city of New York, as aforesaid, said second party, its successor or its successors in this trust, is hereby authorized and required, upon the written request of the holders of said bonds to the amount of the majority of all the bonds then outstanding, the principal or interest or any part thereof which shall then be in arrears or then unpaid, as
361 aforesaid, to take possession, operate, and control and at such times as shall be determined by such holders of a majority of the bonds outstanding to offer for sale all and singular said railway, with all the rights, franchises, and all other property herein conveyed, as an entirety, and to sell the same at public auction to the highest bidder, at such time and place in the city of Little Rock, in the State of Arkansas, as said trustee may designate, first giving eight weeks' notice thereof and of the time, place, and terms of such sale by notice published at least once each week in at least one newspaper published in Little Rock and New York, and otherwise as may be required by law, the said trustees being hereby authorized to adourn such sale from time to time in their discretion, and if so ad-

journed to make the sale without further notice at the time and place to which the same may be adjourned; and in case of any foreclosure sale or of any sale made under the provisions of this deed of trust, the purchaser or purchasers thereat shall be entitled, in making settlement for and payment of the purchase-money therefor, to deliver to the then trustee, towards the payment of such purchase-money, any of the said bonds and interest coupons secured hereby and held by such purchaser or purchasers, counting such bonds and interest coupons at a sum not exceeding that which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds and interest coupons as his or their share and proportion in that character of such net proceeds of sale after
361*a* allowing for the proportion of payment which may be required in cash for the costs and expenses of the sale, and which proportion of cash payment shall be determined by the then trustee previous to any such sale, and if such proportionate sum shall be less than the amount of such bonds or interest coupons to make such settlement by receipting thereon for the amount to be credited thereupon; and said trustee, its successor or its successors, are hereby irrevocably empowered, on such sale being consum-ated, to make, execute, and deliver any and all conveyance or conveyances that may be necessary to completely transfer and convey all the property hereby mortgaged to the purchaser or purchasers, who may immediately enter upon and take possession of the same, and all the benefit and equity of redemption of the said Ark. and La. Railway Co. therein shall be forever barred, and all recitals in such conveyance contained in relation to the execution of this trust shall be *prima facie* evidence thereof; and the said second party, after the costs and expenses of this trust and sale, including such just allowances for attorney and counsel fees and all other expenses, advances, or liabilities made or incurred by the
361*b* said trustees in respect to the mortgaged property or in performance of any of the trusts herein contained, together with all reasonable compensation for services in the execution of this trust and the discharge of the duties hereby devolved, shall apply the remaining proceeds of the sale to the payment of the interest which shall at that time have accrued upon said bonds or so many of them as shall have been issued and be then outstanding, equally and ratably, until all such interest is paid, and shall afterwards apply the remainder to the payment of the principal of said bonds, equally and ratably, until such principal shall be fully paid, and shall then pay over the surplus, if any, to the said first party, its successors or assigns. It is further mutually understood and agreed that the actual possession, control, and management of said railways and property herein conveyed, with all and singular the appurtenances thereunto belonging, shall be and remain with the said first party, it- successors and assigns, so long as there shall be no default in the payment of the interest or principal in the manner aforesaid of the said bonds hereby secured; and it is further provided and agreed that the said second party or any successor of said second party to the trust herein created may resign and

discharge themselves from said trust by giving twenty days' notice in writing to that effect to the said first party, and on receipt of such notice, or in case there shall at any time become a vacancy in the trusteeship granted the said second party, by resignation, death, refusal or inability to act, or from any other cause, then the acting president of the first party, or, if he fails
362 or refuses to act, any holder of any of the bonds hereby secured, may cause four weeks' notice to be given in at least one newspaper published in St. Louis, Missouri, and New York city, by a publication therein once a week for four weeks that such a vacancy does exist, and designating a time and place in the city of New York for the holders of the bonds hereby secured to meet and choose a successor or successors to fill such vacant trusteeship, and at such meeting the persons holding or representing a majority of the bonds then and there represented may choose and elect one or more persons or a corporation to fill said vacancy and to be the successor of the said party or parties herein created, and such appointment or election shall be designated and certified by an instrument in writing signed and acknowledged by the chairman of the said meeting in the form required for the acknowledgement for record by the laws of Arkansas, who shall deliver the same to the president of the first party, or may file the same for record in the offices of the respective recorders of the several counties in the said State of Arkansas through which said railways may run, and from the last date of such delivery or filing the person or persons or corporation so appointed shall be vested with all the powers and trusts herein given to the said second party as fully as if he or they or it were originally made parties of the second part herein, and like proceedings may be had as aforesaid and with like effect whenever and as often as a vacancy may exist in the trusteeship herein vested in the said second party; and the said first party agrees to pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be imposed on the property herein conveyed, and in case of the default of the said first party in this behalf the said second party or its successors in this trust may pay off and discharge the same, and the sum so paid, with interest at five per cent. per annum in gold coin, shall — paid out of the sale of the said property and franchises as hereinbefore provided; and the said first party, in consideration of the premises, further agrees with the said second party and its successors
363 to execute and deliver such further deeds, conveyances, and assurances as may be necessary and proper to carry out the purposes and object of this instrument; and it is further agreed that said second party and its successors in this trust shall be accountable for only reasonable care and diligence in the performance of the trust hereby created, and said second party accepts — created and declared hereby, and agrees to discharge the same in pursuance of the provisions in that behalf herein contained.

In witness whereof the Arkansas and Louisiana Railway Company, the said first party hereto, has caused its corporate name to be hereto signed by its president and its corporate seal to be hereto

affixed, attested by its secretary, and the said second party has signified its acceptance of the trusteeship herein created by likewise causing its corporate name to be hereto signed by its president and its corporate seal, attested by its secretary, to be hereto affixed the day and year first above written.

ARKANSAS AND LOUISIANA RAILWAY COMPANY,
By W. H. CARRUTH, *President.* [SEAL.]
Attest: R. B. WILLIAMS, *Secretary.*

THE MERCANTILE TRUST COMPANY,
By LOUIS FITZGERALD, *President.*

The above was duly acknowledged by the parties concerned.
[SEAL.] HENRY C. DEMING, *Secretary.*

(The foregoing instrument was duly acknowledged according to law by all the parties concerned.)

364 EXHIBIT "E."

Office of the Arkansas and Louisiana Railroad Co.

WASHINGTON, ARKANSAS, *February 5th*, 1884.

At a meeting of the board of directors of the Arkansas and Louisiana Railroad Company, held, pursuant to the call of the president of said company, at the place and upon the date above mentioned—present and presiding, W. H. Carruth, president, and Directors W. P. Hart, Paul F. Beardsley, J. D. Conway, J. K. Jones, A. B. Williams, H. B. Holman, and Thomas H. Simms, and R. B. Williams, secretary—the following resolution was, upon motion of Director A. B. Williams, unanimously adopted: Whereas, under and by virtue of the terms of a certain mortgage or deed of trust, of date July 2nd, 1883, executed and delived by this company to the Mercantile Trust Company of New York City, it is provided that bonds shall be issued and delivered at not exceeding the rate of fifteen thousand dollars per mile for every mile of the railway of this company which has been actually constructed and ready to be put in operation, as sections of five miles or more are completed, upon filing with said trustee a certificate under oath of the president, vice-president, or chief engineer of this company to the effect that so much of the railway of this company has been properly constructed and completed and is in good condition and repair and ready for use; and whereas said sworn certificate has been made by the party or parties aforesaid, and will with this resolution be delivered to the said Mercantile Trust Company, showing sixteen miles of the railway of this company to have been properly constructed and completed and in good condition and repair, and ready for use: Be it therefore resolved that the Arkansas and Louisiana Railway Company, through its board of directors now assembled, hereby requests, authorizes, and directs the said Mercantile Trust Company to certify, issue, and

deliver to the St. Louis, Iron Mountain and Southern Rail-
365 way Company two hundred and forty of the said bonds, numbered consecutively from one to two hundred and forty, inclusive, authorized and to be issued under said deed of trust for the purpose of discharging obligations given to said St. Louis, Iron Mountain and Southern Railway Company for advances and loans of money to the Arkansas and Louisiana Railway Company for the purpose of constructing and completing the sixteen miles of the road as aforesaid.

There being no further business, on motion, the board adjourned subject to the call of the president.

WILLIAM H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

Indorsed: Filed July 3rd, 1886. Ralph L. Goodrich, clerk.

366 In the United States — Court for the Eastern District of Arkansas.

PAUL F. BEARDSLEY, Plaintiff,
v.
JOHN D. BEARDSLEY *et al.*, Defendants.

Interrogatories to be Propounded to Mr. R. S. Hayes, a Witness for the Defendants.

Question 1. Were you first vice-president and general manager of the Missouri Pacific railway, including the Iron Mountain Railway Company, from 1882 up to and including part of 1885?

Ans. Yes.

Question 2. Did you as such vice-president make an arrangement with J. D. Beardsley, the defendant in this suit, under which you furnished him or caused to be furnished to him money and material for the construction of the Arkansas and Louisiana railway from Hope to Nashville?

Ans. Yes.

Question 3. Did you know of or recognize or deal in any way with Mr. Paul Beardsley, plaintiff in this suit, in connection with this transaction, or was your action in this matter or the advances made or ordered to be made by you based in any degree upon any knowledge of Mr. Paul Beardsley or of any credit that he had?

Ans. No.

Question 4. Did you know that J. D. Beardsley had a contract with the Arkansas and Louisiana Railway Company for the construction of that road under which he built it?

Ans. I understood so.

Question 5. Do you know whether an interest in that contract was conveyed to other parties by an indorsement on it?

Ans. Yes. I was so informed.

367 Question 6. Was Mr. Paul Beardsley a party to whom an interest was conveyed by this indorsement?

Ans. Not that I know of.

Question 7. Was Mr. Paul Beardsley, so far as you know, a party in interest in either this contract or in the indorsement on it?

Ans. Not so far as I know.

Question 8. Did you, as first vice-president, make a settlement with J. D. Beardsley in June, 1885, at which time the indebtedness—and his associates to the St. Louis & Iron Mountain Railway Company—for the advances made as before stated was ascertained and fixed, and the time and manner of payment thereof provided for in a contract then made, this at your office in the city of St. Louis, Mo.?

Ans. Yes.

Question 9. Was the contract of settlement made at that time drawn by your attorneys—that is, by the attorneys of your company?

Ans. I believe it was.

Question 10. Was this contract read to you or by you, and was it ratified by you?

Ans. Yes.

Question 11. In that contract "J. D. Beardsley and associates" are made parties of one part and are made to acknowledge their indebtedness, &c. Was the word "associates" there intended to include or in any way to refer to Mr. Paul Beardsley?

Ans. Not that I know of.

Question 12. Who was referred to in that contract by the term "associates?"

Ans. The St. Louis, Iron Mountain and Southern Railway Company, or some other party representing it, so far as I know.

368 In the Circuit Court of the United States for the Eastern District of Arkansas.

PAUL F. BEARDSLEY, Complainant,
v.
JOHN D. BEARDSLEY and ARKANSAS AND LOUISIANA RAILWAY Co., Defendants.

Interrogatories by Complainant to be Propounded to Mr. R. S. Hayes, a Witness for the Defendants.

Question 1. If you, in answering defendants' second question propounded in his interrogatories herein, answer that you did as such vice-president make an arrangement with J. D. Beardsley, one of the defendants in this suit, under which you furnished him or caused to be furnished to him money and material for the construction of the Arkansas and Louisiana railway from Hope to Nashville, please state fully the terms and conditions of such arrangement, whether the same was oral or written, the security given by said J. D. Beardsley, the reason for making such arrangement, the parties benefited or intended to be benefited by such arrangement, and in fact everything within your knowledge appertaining to the matter.

Answer. The original contract was written. It was afterwards

changed from time to time, both orally and by correspondence, but in any case I only knew and recognized J. D. Beardsley, one of the defendants in this suit. The Iron Mountain road was supposed to be benefited by the contract in developing new local country and preventing disastrous competition. In the opinion of our attorneys the Iron Mountain railway was fully protected in making the advances from time to time.

Question 2. If in your answer to the third question propounded by defendants you answer that you did not know or recognize or deal in any way with Mr. Paul F. Beardsley, the complainant in this suit, in connection with this transaction, and that your action in this matter or the advances made or ordered to be made by you
369 was not based in any degree upon any knowledge of Mr. Paul Beardsley or of any credit that he had, please state whether during your negotiations with defendant, J. D. Beardsley, or at any other time, he, the said defendant, said to you that he had let his brother, the said Paul F. Beardsley, have an interest in the Arkansas and Louisiana railway or in its stock, or words to that effect; state what he did say to you in this connection, if anything, and the time and place and circumstances as you recollect them.

Answer. I do not know Mr. Paul F. Beardsley and paid no attention to the private or family affairs of the defendant, J. D. Beardsley, and have no recollection of the circumstances referred to, although it is possible he may have mentioned many facts in which I was not concerned. I have no recollection of time, place, circumstances, nor what he said.

Question 3. Did the defendant, J. D. Beardsley, at any time deposit with you, either in your capacity as such vice-president or otherwise, or to some other person representing the St. L., I. M. & S. R'y Co. two thousand or any other number of shares of the capital stock of the Arkansas and Louisiana Railway Company as security for material and money advanced under the contract between said company and the St. Louis, Iron Mountain and Southern Railway Company? If so, did you examine said stock, and was not a portion of it issued in the name of Paul F. Beardsley? State all you know about the matter.

Answer. Yes; the stock referred to or some shares of the stock representing the road between Hope and Nashville was deposited as security with the St. Louis, Iron Mountain and Southern Railway Company, which was examined and pronounced satisfactory by the railway company's attorneys, but I never saw the certificates of the stock, nor do I know in what name it stood nor anything else about the matter.

Question 4. If J. D. Beardsley ever agreed to let you or the
370 railway company you then represented have a stock interest in the Arkansas and Louisiana Railway Company, state when it was, and whether before or after the contract between said Arkansas and Louisiana Railway Company and the St. L., I. M. & S. R'y Co., by which the latter company agreed to advance materials, &c., to the former company. State how long before or after; what

consideration, if any, was there for such an agreement upon the part of J. D. Beardsley. State everything you know about the matter.

Answer. Yes; J. D. Beardsley agreed to transfer one-half of the stock interest in his railways to such parties as I might designate. I do not remember when this agreement was made, but it was after the first or original contract and during the construction of the road. It was thought a joint ownership of the property would be beneficial to himself and the Iron Mountain Railway Company.

Question 5. At the time J. D. Beardsley turned over to you or to the railway company you then represented the stock interest in the Arkansas and Louisiana Railway Company did he make any reference to a debt of $12,000 or other amount due one Vinton Alderman; if so, what did he say about it? What understanding did you have with him regarding the payment of said debt? Was it not agreed that the Arkansas and Louisiana Railway Company should assume such payment? State all that was said, agreed, or understood about this matter.

Answer. I have no recollection of the matter; but if in our final settlement the payment of the debt of $12,000, in the manner as stated, was approved, it must have been satisfactory at the time, although I cannot now recollect.

Question 6. If you ever made any settlement with J. D. Beardsley such as is mentioned in the 8th question propounded in the interrogatories herein or any other settlement by which the advances made to the Arkansas and Louisiana Railway Company or to J. D.
371 Beardsley for the use of said railway company were ascertained and fixed and the manner and time of payment thereof provided for, please state when this was and where it was, the terms and conditions of such settlement, whether oral or written. If written, attach a copy to your answer or give a reason for not doing so. State all you know about the matter.

Answer. The agreement was in writing, and contains within itself answers to the queries as to date, terms, and conditions. One copy was given to J. D. Beardsley and the duplicate was filed with the Iron Mountain road. I cannot attach a copy, as I have none.

Question 7. If, in answering question eleven propounded in defendants' interrogatories herein, you answer that the word "associates" did not intend to include or in any way refer to Mr. Paul F. Beardsley, please state how you know this. Did you ever hear Mr. Paul F. Beardsley say anything about it? State fully your means of information.

Answer. I can only answer this negatively and not positively, as I know nothing about Mr. Paul F. Beardsley.

Question 12. If, in answering question 12 propounded in defendants' interrogatories, you state who was referred to by the term "associates," please state how you know this and from whom you derived your information. State fully all you know about it and your means of information.

Answer. I do not know whom Mr. John D. Beardsley may have associated with him in any matter which he controlled; my information was only such as I had obtained from him as to whatever

related to himself, but wherever the interest of the Iron Mountain railway was concerned I had examined and reported upon by the regular attorneys; I therefore only knew the Iron Mountain railway as his associates.

Question 9. In your dealing with J. D. Beardsley were you actuated by motives of personal friendship or were such dealings purely business matters, growing out of said Beardsley's con-
372 nection with the Ark. and Louisiana Railway Company? Was credit given to him on his individual responsibility or upon your faith in the Arkansas and Louisiana Railway Company enterprise—in other words, were not the advances of money, materials, &c., which were made by the St. L., I. M. & S. R'y Co. and about which you have been testifying herein, made upon the security furnished by the Arkansas and Louisiana Railway Company, or do you pretend to say that such advances were made upon the credit of J. D. Beardsley alone, outside of his connection with the Arkansas and Louisiana Railway Company?

Answer. All my transactions with J. D. Beardsley were purely business matters, and the Iron Mountain railway was protected in everything it did. In making such transactions, however, the personal character of the individual was necessarily partially relied on.

Question 10. What became of the certificates of stock in the Arkansas and Louisiana Railway Company which were turned over to you by J. D. Beardsley? If you returned them to said Beardsley why did you do so? State all you know about this matter.

Answer. I do not know, but think they were returned to Beardsley with the understanding that in so doing his road would probably be extended, which would benefit the Iron Mountain more than retaining the stock.

Question 11. Do you know of anything else which would be of benefit to the complainant, Paul F. Beardsley, and assisting him in maintaining his claim in this action? If so, please state it.

Answer. I do not know the complainant, Paul F. Beardsley, nor am I aware of any claim that he has.

R. S. HAYES.

(Endorsed:) Opened and published by order of court July 5th, 1886. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

373 J. W. TEETERS, a witness known to me to be of lawful age, being to me, at the time and place aforesaid, produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the action aforesaid, did then and there, on his oath aforesaid, depose as follows, to wit: I lived sometimes in Texas and sometimes in Arkansas; am a railroad man. I have lived in Washington, and I have worked for the Washington and Hope and the Arkansas and Louisiana railway. I am fifty years of age. I don't remember whether I first worked for J. D. Beardsley on the road in the fall of 1879 or of 1880, but I know that I was working for him in 1880, in the fall.

I laid the last two miles of rail on the Washington and Hope railway between Mitchell's and Washington in the fall of 1880. I worked for the railway up to the 10th February, 1885, with an interval of, perhaps, two or three months. I was employed in track-laying, bridge-building, and other work. My position was that of foreman. I remember when the gauge of the road was changed, and I did some of the work. I laid all the track from Captain Hanna's, about two and a half miles south of Washington, to Nashville, in Howard county. During all this time it was J. B. Beardsley that I was working for—at least that was always my understanding. No one else had any control or supervision over me. I don't know who laid the broad-gauge track from Hope to Captain Hanna's. I was a foreman and had charge of men—in charge of track-laying. J. D. Beardsley was the recognized owner of the road. I knew nothing of W. P. Beardsley when I was laying narrow-gauge track. He came to the road, I think, in 1881. He had nothing to do with laying the track from Captain Hanna's to Nashville. There were two or three other foremen on that work who worked at surfacing the track to Nashville, but I was the only person who had charge of the track-laying. I never knew any one but Major J. D. Beardsley in my work on the road, and no one ever said to me that they had any interest in the road. During the time I have worked for the
374 road I have worked with P. F. Beardsley, and he never made any statement to me that he had any interest in the road. My impression always was that he was an employee, the same as myself. I based this impression upon the fact that he had a salary paid to him every month, and my understanding was that he was subject to orders just the same as other employees. I never noticed any difference in his treatment, so far as his sphere went, from that accorded to other employees.

The track I refer to as laid by me in the fall of 1880 between "Mitchell's and Washington" was a narrow gauge, and that referred to as from "Captain Hanna's to Nashville" was a broad gauge or standard gauge. P. F. Beardsley did not, so far as I could see, do any more work or any greater work than other employees of the road on the same work. My salary as foreman was, I think, $75.00 per month, or it may have been only $65.00; I don't quite remember. I don't think P. F. Beardsley did any more work than I did. In the construction of the road surfacing and laying iron was fully as important as any other of the work done. I was in charge of track-laying. Paul F. Beardsley was sometimes working on the engine and was sometimes off with the engineers. He did various kinds of work. When in company with me he did not do any more work than I did. I know nothing of his experience as a railroad man or on railroad work, but judging from conversations I have had with him I should say that he had when he came to the road no experience in road-bed or track-laying.

Cross-examination:

I never acted as engineer on the road. That was out of my line of business. I have constructed bridges on the road. I did not

construct the bridge near Nashville over Mine creek and I don't know who had charge of that work. Paul F. Beardsley was at that work, but I cannot say who had charge. We had to wait on the south side of that bridge with our track-laying for, I suppose, about a week before the bridge was completed. It was, however,
375 pretty well along when we got there. I have constructed two bridges on the road in what is known as "Carruth's fields." They were frame bents, commonly called tressels. I am both a wood and iron carpenter. I laid the work off on these bridges and had men to do the work. I myself have done morticing and boring and other manual work on these bridges. I was always a hard-working man and always did good work and I am and always have been an able and stout-bodied man. I know nothing as to the rights or interests of J. D. Beardsley or of Paul F. Beardsley in the road.

Re-examination:

I worked four or five years on the road and I never heard any one question J. D. Beardsley's right to the road, and never heard anything of P. F. Beardsley having any interest. Paul Beardsley was on the road most of the time I was there.

And further deponent saith not.

J. W. TEETER.

EDWARD ALEXANDER, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the action aforesaid, did then and there, on his oath aforesaid, testify as follows, to wit:

I am a citizen of Arkansas, and have always so been. I am forty-four years of age. I was born in the town of Washington, and have been engaged in the lumber business for many years. I know both J. D. Beardsley and Paul F. Beardsley, and have been well acquainted with them for several years. I have had large dealings with J. D. Beardsley, whom I have always regarded as the owner of the Arkansas and Louisiana railway. I furnished the road with about 40,000 ties and a great deal of lumber. Mr. Paul Beardsley inspected most of the ties, but J. D. Beardsley always paid for them. J. D. Beardsley gave the specifications of what he would require the ties to be. On one occasion I thought that Mr. Paul F.
376 Beardsley was too severe in his inspection, and I remonstrated with him; he replied that he was inspecting them under instructions from J. D. Beardsley and could not vary them, and that he was an employee working on a salary and had no interest whatever in the matter, and had no discretion but to obey instructions. Everything that I had ever seen before or have ever seen since in connection with the road makes me believe that the declaration then made by him was strictly true. This declaration was made in the summer of 1883; I cannot give the exact date. On another occa-

sion, when I wanted to make a change in the specification for some railroad ties which I thought would be advantageous to the road, I applied to Paul F. Beardsley and he replied that he had no authority and had nothing to do with it, and that I would have to see J. D. Beardsley; this was also in 1883. I generally settled my tie account with Mr. Paul F. Beardsley, and Mr. J. D. Beardsley paid what Paul F. Beardsley said was due. I settled with Paul F. Beardsley in October, 1883, and he struck a balance on a tie book which he kept in the depot at Washington. Some time in November, 1883, the depot at Washington was burned, and Mr. P. F. Beardsley's tie book was burned up in the fire. In making up the account afterwards he started from the balance which we both remembered to be due me, but he charged me with $150.00 that had already been charged to me in our previous settlement. I protested against the charge, but he insisted upon it. He told me at the time and when we talked of it afterwards that it was of no interest to him at all, and that he had no personal interest at all, but only desired to do what was right between J. D. Beardsley and myself. All that I have observed in connection with my association with Paul Beardsley and J. D. Beardsley, in my extended business with the road, goes to satisfy me that Paul F. Beardsley did not pretend to any property interest in the road. I have always regarded J. D. Beardsley as the owner of the road, and I still believe him to be so.

377 Cross-examined:

I know nothing of the relative interests of J. D. Beardsley and of Paul F. Beardsley. I do not pretend to say whether Paul F. Beardsley has any interest in the road or not, because he never told me that he had nor did J. D. Beardsley or any one else.

Re-examined:

Question. You say in your cross-examination that you did not know that Paul F. Beardsley had any interest in the road and that he never told you that he had. In saying this do you mean to say that he never told you affirmatively that he had an interest?

Answer. Yes; that is what I mean.

Recross-examination:

Question. Is the statement made in your examination-in-chief in regard to the representations made to you by Paul F. Beardsley correct?

Answer. Yes.

Redirect examination:

From the conversations with Paul F. Beardsley referred to it seemed to me that Paul F. Beardsley only wanted to protect J. D. Beardsley's interest in the matter. From these conversations with Paul F. Beardsley I understood him to say that he was working for a salary, and that he had no interest in cheating me out of a nickel or a dollar.

I drew the conclusion from other transactions that he had no interest in the road.

And further deponent saith not, and hath signed.

ED. ALEXANDER.

(Endorsed:) Filed July 3rd, 1886. Ralph L. Goodrich, clerk.

378 In the United States — Court for the Eastern District of Arkansas.

PAUL F. BEARDSLEY, Plaintiff,
v.
J. D. BEARDSLEY, Defendant.

Interrogatories to be Propounded to Mr. Vinton Alderman, a Witness for the Defendant.

Question 1st. State your name, age, and place of residence; also business and occupation.

Answer. Vinton Alderman; about fifty years; Wirt Co., Burning Springs, district West Va.; manufacture of lumber.

Question 2. Do you know the parties to this suit; if so, how long have you known each of them and where?

Answer. I know J. D. Beardsley, the defendant; have known him ten years in West Va. and Arkansas; I do not know Paul F. Beardsley.

Question 3. Have you ever had business relations with J. D. Beardsley, the defendant in this suit, in any other State than Arkansas; if so, when and where, and what kind of business?

Answer. I had business relations with J. D. Beardsley for several years in West Va. Our transactions were in connection with lumber business, financial matters, and general business. I have had quite large business transactions with him.

Question 4. Was there any written contract between you in the transaction of this business?

Answer. No; I had no written contract in any of these transactions with him.

Question. Were your business transactions with J. D. Beardsley complicated—that is, were they of a character that in the
379 absence of a written contract might easily have led to dispute and trouble?

Answer. Yes; our transactions were quite complicated, and we might easily have had trouble and disputes.

Question 6. Were your business relations with him pleasant and satisfactory, and were your transactions closed up to the mutual satisfaction of both parties?

Answer. Yes; entirely so in all cases.

Question 7. Do you know of J. D. Beardsley making a purchase from the county of Shelby, State of Tennessee, consisting of a lot of

light iron rail, a narrow-gauge locomotive, fish-plates and bolts, and other railroad material; if so, about what time was this purchase made?

Answer. Yes; I know of his making such a purchase. It was in first of July, 1879.

Question 8. Do you know of J. D. Beardsley making a contract with the president and directors of the Washington and Hope Railway Company for the construction of that road; and, if so, do you know the terms and conditions of that contract; and, if so, how do you know them?

Answer. I know he did make such a contract; I know the terms and conditions; I have seen and read the contract.

Question 9. Do you know about what time J. D. Beardsley made this contract with the Washington and Hope Railway Company?

Answer. It was made in the month of September, 1879.

Question 10. Did you afterwards become a party with J. D. Beardsley to this contract? If so, upon what terms, and did you have, as between yourselves, a written contract defining what each should do and what each should receive?

Answer. I afterwards became interested in the enterprise. The terms were that each should contribute. The stock when received was to be equally divided. We were to settle between ourselves, and he who put in the least was to pay the other sufficient to
380 equalize the outlays. We had no written contract as between ourselves.

Question 11. Was the Washington and Hope railway built under this contract?

Answer. It was built by us under the contract with the Washington and Hope Railway Company.

Question 12. Was the iron, material, and rolling stock purchased by J. D. Beardsley in Tennessee used in the construction and operation of the road?

Answer. It was.

Question 13. Where was the rest of the iron needed to complete the road obtained, and was it bought for cash or on a credit?

Answer. It was bought on a credit from the St. Louis Bolt and Iron Company of St. Louis, Mo.

Question 14. Of what State were you a citizen at that time?

Answer. Of the State of Ohio.

Question 15. At the time the road was completed or afterwards did you become desirous of selling your stock in the road; and, if so, why?

Answer. In the early part of 1881 I became desirous of selling my stock. The reason was I decided not to go to Arkansas to live, as I had intended. I did not expect any immediate dividends.

Question 16. About that time did you first offer to sell your stock, and to whom did you first offer it?

Answer. In the early part of 1881; to J. D. Beardsley.

Question 17. Did J. D. Beardsley accept your offer and buy your stock at that time or at any time when you offered it to him?

Answer. No; he did not.

Question 18. Did you afterwards offer your interest to any other party; if so, to whom?

Answer. Yes; I afterwards, *of* 1881, offered it to Col. Para-
381 more, then president of the Texas and St. Louis railway.

Question 19. To whom did you finally sell your stock in the road, and at what price?

Answer. I sold it to J. D. Beardsley for $12,000.

Question 20. Please state what negotiations led up to the sale of your stock to J. D. Beardsley, what the terms of the sale were, and state also whether you have been paid in full; or, if not, how much is still due you on the sale.

Answer. There were really no negotiations. The first intimation I had that J. D. Beardsley would buy the stock was a letter saying he would take my interest at $12,000 if I would grant a credit on it. I wrote him at once that I would do so, and that I considered it sold to him. I have been paid in cash and notes about $5,500. One note of $500 is not yet due. The balance on the purchase J. D. Beardsley still owes me.

Question 21. Did you and J. D. Beardsley ever have a settlement to equalize your respective outlays in the construction of the road?

Answer. No; we never did. It was understood that this purchase and sale closed the whole matter up as between us.

Question 22. In selling out to J. D. Beardsley did you consider that you were selling your stock in a railroad, or that you were closing up a partnership existing between you and J. D. Beardsley?

Answer. I was selling him my stock which I was entitled to under our understanding. This was what we got for building the road.

Question 23. Had there been any correspondence between you and J. D. Beardsley in reference to the purchase of the stock immediately previous to the sale?

Answer. No; I do not know that we ever had any correspondence by letter about the sale. J. D. Beardsley used to come to Cairo, W.
Va., and I met him there and talked the matter over with him.
382 Question 24. Did you ever have any correspondence with Paul Beardsley in reference to your stock, or did you have any knowledge of him in connection with your transactions with J. D. Beardsley?

Answer. I never had any correspondence with Paul Beardsley. If he had any connection with our transaction I did not know it.

Question 25. At or about what time did you make the sale to J. D. Beardsley?

Answer. About November 10th, 1881.

Question 26. Had you ever offered your stock for ten thousand dollars, or would you have sold it for that sum?

Answer. No, sir.

Question 27. Previous to J. D. Beardsley's writing you that he would take your stock at twelve thousand dollars if you would give him time enough to pay for it had you offered it to him on a credit?

Answer. I think not. He had never before said he would buy it.

Question 28. Would you have sold your stock to Mr. Paul Beardsley on a credit?

Answer. No; I did not know him.

Question 29. How have you been paid the amounts you have received on account of this sale of your stock?

Answer. Partly in cash and partly in the individual notes of J. D. Beardsley and partly by sale of some property J. D. Beardsley had in West Va.

Question 30. In the payments received by you in cash or in notes has Mr. Paul Beardsley ever appeared, or have you ever had any reason to suspect that he was in any way a party or interested?

Answer. Mr. Paul Beardsley has never appeared. If he had anything to do with the matter I did not know it.

Question 31. Has your long acquaintance with J. D. Beardsley been of a close and intimate character?

Answer. Yes; I think I have known him quite intimately.

383 Question 32. Do you consider J. D. Beardsley a man who keeps his own counsel closely, or does he talk freely about his business?

Answer. I do not think him a close-mouthed man at all. He talks very freely about his private business.

Question 33. From your knowledge of him do you believe him to be straightforward and truthful?

Answer. I do.

Question 34. To whom do you look for the balance due you for the stock?

Answer. To J. D. Beardsley.

VINTON ALDERMAN.

STATE OF WEST VIRGINIA, }
County of Wirt. }

I, R. C. Tucker, a notary public, of the said county, do certify that Vinton Alderman, whose name is signed to the foregoing writing, has this day acknowledged the same before me in my said county.

Given under my hand and seal this 23rd day of June, 1886.

[SEAL.] R. C. TUCKER,
Notary Public.

In the United States Circuit Court for the Eastern District of Arkansas.

PAUL F. BEARDSLEY, Plaintiff, }
v.
JOHN D. BEARDSLEY *et al.*, Defendants. }

We hereby agree that answers made under oath before any officer authorized by the laws of the State of West Va. may be made to the foregoing interrogatories and cross-interrogatories, and that the same and the answers thereto when so made and duly certified may be

read as evidence on the trial of the above-styled cause, subject to objections only for incompetency or irrelevancy.

JONES & MARTIN,
Solicitors for Plaintiff.
A. B. & R. B. WILLIAMS,
Sol. for Def'ts.

384 *Cross-Interrogatories to be Propounded to Vinton Alderman.*

Question 1. If you answer defendants' 7th question in the affirmative, also state what he gave for the same, and whether the same were used in the construction of the Washington and Hope railway as a part of J. D. Beardsley's investment therein.

Answer. Except by report, I do not know what he gave for it. The rest of the question is already answered.

Question 2. If you answer defendants' 8th question in the affirmative, state whether the contract was in writing or not. If in writing attach a copy to your answer.

Answer. This question answered before. I have no copy.

Question 3. If you answer defendant's 10th question in the affirmative, state whether that contract was in writing; and, if so, attach a copy to your answer.

Answer. This question also answered before.

Question 4. Please attach whatever correspondence or copies thereof and whatever writings of any character between you and J. D. Beardsley which in any manner pertains to your answer to defendants' 20th question.

Answer. I haven't the letter from J. D. Beardsley and cannot furnish copy; neither have I duplicate of my reply. If it is desired to have the notes they have been paid and taken up except one, and that has passed out of my hands.

Question 5. If you answer defendants' 29th question in the affirmative, please answer fully and attach a copy of the settlement of the account between you and J. D. Beardsley, and mark it Exhibit "H."

Answer. See my answer to defendants' 21st question.

Question –. If you answer defendants' 23rd question in the affirmative, please attach the correspondence.

Answer. My answer to defendants' 23d question answers this.

385 Question 7. State how much money and material in value you and J. D. Beardsley each contributed to the construction of the Washington and Hope railway and how the account stood between you at the date of your sale to him, and attach an itemized statement of the account.

Answer. The transaction was closed nearly five years since and the outlay dates from 1879. I do not keep regular books and I cannot now furnish account. I do not know how much J. D. Beardsley put in, as we never had a settlement, nor can I say, for the same reason, how the account would have stood between us if we had made a regular settlement.

Question 8. If you had a written contract with J. D. Beardsley for the construction of the Washington and Hope railway, please attach a copy.

Answer. See my answer to defendants' 10th question.

Question 9. When you sold your interest in the Washington and Hope railway to J. D. Beardsley, state whether or not this was a full settlement between you and J. D. Beardsley of all interests you had in said railway for the construction or otherwise.

Answer. My answer to 21st question answers this.

VINTON ALDERMAN.

STATE OF WEST VA., }
County of Wirt. }

I, R. C. Tucker, a notary public of the said county, do certify that Vinton Alderman, whose name is signed to the writing above, has this day acknowledged the same before me in my said county.

Given under my hand and seal this 23rd day of June, 1886.

[SEAL.] R. C. TUCKER,
Notary Public.

(Indorsed:) Filed June 30th, 1886. Ralph L. Goodrich, clerk.

386 The court delivered the following opinion:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY AND THE ARKANSAS AND LOUISIANA RAILROAD CO.

(Circuit Court U. S., East. Dist. Ark. April Term, 1886.) In Equity.

Jones & Martin, for complainant; John M. Moore, A. B. & R. B. Williams, and John B. Conway, for def'ts.

CALDWELL, *J.*:

The bill in this case seeks to establish the plaintiff's right to one-third of the paid-up stock and first-mortgage bonds of the defendant corporation which have been issued to the defendant, John D., or which he is entitled to have issued to him under the terms of a construction contract entered into between the defendant, John D., and the defendant corporation, and it also alleges that certain real estate described in the bill was purchased with the money of the corporation, and that other real estate was donated to the corporation for depot and other purposes, but that the defendant, John D., took conveyances therefor in his own name, and prays that he be required to convey the same to the corporation; and the bill contains similar allegation and prayer with reference to a telephone line constructed for the use of the road.

The pleadings and proofs satisfactorily establish the following facts: The town of Washington, the county-seat of Hempstead

county, is situated about ten miles from the line of the St. Louis, Iron Mountain and Southern railroad. It was without any railroad communication, and loss of trade and gradual decay were imminent unless some improved means for the transportation of freight and passengers between some point on the St. Louis, Iron Mount-
387 ain and Southern Railroad and the town could be secured.

To accomplish this end, so far as the limited capital which could be commanded for the purpose would admit, some of the citizens of the town of Washington, on the 11th day of April, 1877, organized under the general laws of the State regulating the formation of private corporations the Washington and Hope Tramway Company. The capital stock of this corporation was fixed at $20,000.00 and its object declared to be the construction of a tramway from the town of Washington to the town of Hope, on the line of the St. Louis, Iron Mountain and Southern railroad, a distance of nine or ten miles.

On the 31st day of May, 1877, the Washington and Hope Tramway Company was, by appropriate proceedings, merged in the Washington and Hope Railway Company. The capital stock of this corporation was $45,000.00, which was afterwards increased to $100,000.00, and its object the construction of a railroad from the town of Washington to the town of Hope.

The corporation begun the work of constructing a narrow-gauge railroad between the towns mentioned and had procured and cleared of the right of way and graded a considerable portion of the road-bed when it entered into an agreement with the defendant, John D. Beardsley, to the effect that if he would complete the road the company would transfer to him all the stock and property of the corporation, including a grant of lands made by the State to the company to aid in the construction of its road and valued at $6,000.00 or $8,000.00, and would also give him a bonus of $10,000.00, to be donated by citizens interested in having the road built.

One Vinton Alderman had an equal interest in this contract with the defendant, John D., but the fact did not appear in the contract.

The defendant, John D., seems to have had but little, if any, capital, and, notwithstanding the liberal terms of the construction contract, for lack of means the building of the road progressed slowly
388 and imperfectly, wooden stringers instead of iron rails having been put down and used for awhile on a part of the road. The road was completed on the — day of ——, 18—, to the satisfaction of the company, and thereupon all the shares of the capital stock of the company, in amount $100,000, less a few shares to qualify a board of directors, were issued to and in the name of the defendant, John D., no part of it having been regularly assigned to Alderman, although he was the equitable owner of one-half of it.

The road was not first class in its construction or appointments and was kept running with difficulty, its earnings for some time being inadequate to defray running expenses.

Alderman returned to West Virginia, the State of his residence, and in the fall of 1881 offered his half interest in the road for sale.

About this time the plaintiff, who is a brother of the defendant, John D., and who had been residing in California, where he had met with reverses in business, came East. The defendant, John D., met him in St. Louis, brought him to the town of Washington, and showed him over the line of the road.

The plaintiff went to New York city on business of his own, and while there, at the request of the defendant, John D., tried to raise means to put the road in better condition. The plaintiff's trip to New York was fruitless of results either to himself or his brother, and the defendant, John D., thereupon gave him employment on the road at a salary of $75.00 per month.

When it was known that Alderman would sell his half interest in the road for $12,000 00 on an indefinite credit the plaintiff, who was a stranger to Alderman, proposed to defendant, John D., that he should make the purchase of the Alderman interest and then sell it to him on like terms.

The defendant, John D., declined to let the plaintiff have the whole of the Alderman interest, but after purchasing that
389 interest for $12,000 he sold two-thirds of the same, or $33,250.00, to the plaintiff for $8,000.00, that being the price at which it had been purchased from Alderman, the plaintiff agreeing to pay therefor when and as fast as the earnings and income from the road would enable him to do so.

A day or so after the sale of the stock to the plaintiff the defendant executed and delivered to him the following writing:

"WASHINGTON & HOPE RAILWAY COMPANY,
WASHINGTON, ARK., *Jan.* 1*st*, 1882.

Memorandum.

I hold the stock of the Washington & Hope Railway Company—thirty-three thousand two hundred and fifty dollars ($33,250.00), or thirteen hundred and fifty shares—which is sold to Paul F. Beardsley, and which, though standing in my name, belongs to him subject to a payment of $8,000.00, with interest at the same rate and from same date as interest on my purchase of Mr. Alderman's stock.

J. D. BEARDSLEY.

Witness:
J. H. BURT."

There is nothing in the record to show what rate of interest the defendant, John D., agreed to pay Alderman, nor from what date it was to run, but having regard to the language of the writing, "with interest at same rate and from same date as interest on my purchase of Mr. Alderman's stock," the presumption probably would be that the rate of interest was the legal rate, viz., six per cent., and that it run from the date of the purchase; nor is there anything in the record showing in terms when or how the defendant, John D., was to pay Alderman, but it is apparent from the testimony that the defendant, John D., had no resources or means of paying Alderman outside of

the road itself or its earnings, and this was known to Alderman. It is obvious, therefore, that Alderman sold his stock upon the understanding that the defendant, John D., was to pay
390 therefor as the means derived from the operation of the road would enable him to do so; and it is equally clear that the sale of the stock by the defendant, John D., to the plaintiff was made on the same terms.

It is indisputable that all parties understood that the road or its earnings was the only source from which the means could be derived to liquidate the obligations incurred in the purchase of the stock by the Beardsleys. They had no capital and the corporation itself was insolvent.

The defendant, John D., himself testifies that the corporation was at this time insolvent and existed by the forbearance of its creditors, and that its stock had no value. These facts were known, and it was well understood that it would require time and good management and hard work and the practice of the most rigid economy by the owners of the property themselves to give it any value.

The brothers were men of good business capacity and great energy and industry, and were capable of performing and did perform every kind of labor connecting with the building, repair, and operation of the road—from track-laying and bridge-building to that of locomotive engineers and machinists. Their ability and willingness to work constituted their capital, and of this kind of capital they had a prodigious amount. By working without regard to hours or weather and the practice of the most rigid economy compatible with the subsistence of themselves and families; the road was gradually put in better condition and its earnings made to pay operating expenses, including a salary or allowance of 200 per month to the defendant and $100 to the plaintiff, their salaries or allowances being proportioned to their respective interests in the road.

It soon became apparent that to make the enterprise a paying investment the road would have to be extended westwardly from Washington to Nashville, in Howard county, a distance of some sixteen miles, and steps were taken to endow the company
391 with the requisite corporate power to extend the road.

It is not necessary to set out in detail all the different steps taken to accomplish this purpose. In the first instance, the name of the corporation was changed to the Arkansas and Indian Territory Railway Company, and some other changes were made in the charter, but this company afterwards conveyed to the present corporation its road-bed, property, and franchises, which consisted entirely of the road and property of the Washington and Hope Railway Company, and is heard of no more, and probably ceased to exist. It was a mere conduit through which the property and franchises of the Washington and Hope Railway Company passed to the present corporation. The present corporation, the Arkansas and Louisiana Railway Company, was formed to take the place of the preceding corporation, with a charter authorizing it to build a railroad nortwesterly from Washington to the Indian Territory and southeasterly from Hope to Louisiana. By an amendment of its

charter the capital stock of the present corporation was fixed at $2,400,000.

The road, property, and franchises of the Washington and Hope Railway Company were conveyed to the present corporation, which assumed the debts of the old corporation and was to issue its stock in lieu of the stock issued by the old corporation. The new corporation had no property or assets other than what it derived from the Washington and Hope Railway Company, and it was for all practical purposes that corporation under a new name, with authority to issue additional stock and extend the line of its road, and the rights and the relations of the plaintiff and defendant as stockholders and otherwise were the same in the new that they were in the old corporation.

While the new corporation, like the old, was an essential legal entity, its road and property were, as between the plaintiff and defendant, regarded as their individual property, owned as tenants in common, according to their respective interests as represented
392 by their stock. All the stock issued or which could rightfully be issued as full-paid and non-assessable stock belonged to the plaintiff and defendant, except a nominal amount sufficient to qualify the requisite number of persons to act as directors. Some one hundred shares of stock were issued in the name of the plaintiff for some reason that is not very clear, but the plaintiff's remaining stock was held in trust by the defendant. John D. was the general manager and director of the business and conducted it as he would if it had been his private business, except that the usual corporate forms were observed for legal purposes and because they were a legal necessity. His control of the corporation and its property was absolute. The directory did not direct and control him; he made, directed, and controlled the directory.

On the 22nd day of May, 1883, John D. drafted and submitted to the directory for their adoption a contract, which was agreed to and executed between himself and the company, for the immediate construction of the road to its present terminus and for the construction of the balance of the line in Arkansas, "as fast as the company may desire." This contract had a very extended retrospective operation.

For work done and improvements long before made on the Washington and Hope railway John D. was to receive $100,000 par value of the full-paid stock and $150,000 of the first-mortgage bonds of the present company, and for each mile of road built under the contract he was to receive $20,000 in full-paid stock and $15,000 of the first-mortgage bonds of the company.

The road from Washington to Nashville was also well advanced towards completion before this contract was entered into, and more than two-thirds of the materials advanced by the St. Louis, Iron Mountain and Southern Railroad Company to aid in its construction were advanced before the execution of this contract. The contract worked no change and was not intended to work any change in the previous relation of the parties.

The road had been extended and was becoming valuable
393 by the work and exertion of these brothers. Debts had been

incurred in extending and improving it. The St. Louis, Iron Mountain and Southern Railroad Company, moved to do so, probably, because the line from Hope to Nashville would operate as a feeder to its road, furnished money and materials to assist in building the road from Washington to Nashville to the amount of $120,000 or more. This debt could only be secured by the stock and bonds of the company. A further extension of the road was contemplated. The road belonged in law to the corporation, to the artificial being, and the owners of all its stock could not sell or mortgage it as their property, although they had built it.

It was then perceived that to make the road available as security for debts already incurred and any that might be incurred in the further extension of the road resort must be had to the corporation, which must upon some sufficient consideration issue its stock and bonds to those who had built the road and contemplated extending it. The object could be accomplished best through the agency of a construction contract which should provide for issuing the stock and bonds of the corporation for the work already done, as well as any that might thereafter be done.

These considerations led to the construction contract.

The defendant, John D., was named as contractor, but in all that he did, either before or after the making of this contract, he was acting for himself and the plaintiff according to their respective interests in the property.

The road was extended to Nashville by the use of its earnings, by borrowing on its credit, and by the labor and toil of the plaintiff and defendant. The defendant did not invest any of his private means in the work; indeed, it is quite clear that he had no capital to invest outside of his interest in the road. It was their joint work and the credit of their joint property that earned whatever
394 was earned under the construction contract, both before and after it was made. The plaintiff must therefore be held to be the equitable owner of one-third of the full-paid and non-assessable stock of the company which had been or ought to be issued by the Washington and Hope or Arkansas and Indian Territory Railway Company, and of a like proportion of the stock and first-mortgage bonds of the defendant company which have been issued or which ought to be issued up to this date under the construction contract bearing date 22nd May, 1883.

It is believed these rights of the plaintiff and the trust relation which the defendant sustained to the plaintiff would never have been questioned but for an unfortunate and bitter family quarrel which sprang up between the brothers and their families in February of this year. Denying the fact that the plaintiff has any rights such as he claims, the defence insists on various legal defenses. The written instrument relating to the purchase of the stock is not ambiguous. It does not show a conditional sale. The sale of the stock was absolute, the title passed, and the seller retained a lien for the price. Payment was to be made in the future, but that did not prevent the equitable title to the stock from vesting in the plaintiff at once.

Parsons on Contracts, 519–537.

This instrument converted the defendant into a trustee of the legal title for the plaintiff. The holder of the legal title may convert himself into a trustee by making a valid declaration of trust upon good consideration.

1 Perry on Trusts, sec. 384, note 4.

The relation of pledger and pledgee was created. The stock remained in the hands of the defendant as a pledge for the price. The delivery of the stock to the purchaser and its redelivery to the seller is not necessary to create this relation.

Colbrook on Collateral Securities, sec. 306.

395 The contract was not unilateral.

The writing does not contain the whole contract; that was verbal. The writing was executed after the contract was made and only disclosed a part of it. The contract bound both parties and each could enforce his rights under it. Upon the facts of this case tender of payment of the price of the stock was not necessary before filing the bill for several reasons:

First. The money was not due according to the terms of the contract. If it be conceded that the plaintiff's share of the earnings of the road, if they had been applied to that purpose, would have paid the debt, the defendant is not helped, because he alone handled and directed the application of all the earnings and he cannot censure the plaintiff or put him in default for his own act.

Second. The defendant having received all the earnings of the road and appropriated a portion thereof to his own use, the plaintiff was entitled to a credit on his purchase for his share of the earnings appropriated by the defendant, and the amount of such credit could be ascertained only by a bill for an account.

Third. To a party who declares he will not be bound by a contract it is not necessary that a tender should be made.

2nd Wharton on Contracts, sec. 995.

It is a general rule that when the tender of performance is necessary to the establishment of any right against another party the tender is waived or becomes unnecessary when it is reasonably certain that the offer will be refused.

Hill *vs.* Exchange Bank, 105 U. S., 319.

Tacy *vs.* Irwin, 18 Wall., 549.

It is said the plaintiff can have no interest in the construction contract or its fruits because he was a member of the board of directors at the time it was made. It is undoubtedly true that
396 courts of equity look with great jealousy upon contracts made by directors with the corporations. Such contracts are not necessarily void, but they may be avoided by the corporation or stockholders who have not assented to or approved or participated in them if the objection is made in reasonable time; but the rule here attempted to be invoked has no application to this case, and if it had it could not be invoked by the defendant. The defendant, who had absolute dominion over the corporation as the legal holder

of all its stock, himself resigned as a director just before the execution of the contract, and placed his brother in the directory in his place, and himself proposed and submitted to the board the contract for execution, and it was executed accordingly. It will be observed that neither he nor the corporation complains that the contract was not honest and fair; on the contrary, the defendant insists that it is a valid contract between himself and the corporation, but that whatever interest the plaintiff would otherwise have had in the contract is forfeited to the defendant, because the plaintiff was a director when the contract was made.

This would be an invasion of the rule invoked. The rule is intended to prevent fraud, but its extension and application to a case like this would make it an engine of fraud. The defendant knew the interest the plaintiff had in the contract when it was executed, and if the contract is invalid as to the plaintiff it is invalid.

The contract and everything relating to it, including the making the plaintiff a director, was the work of the defendant, and the law will not deprive the plaintiff of his rights and confer them on the defendant for an act of his own or an act which he himself prompted and approved. Again, the motives for entering into this contract have been adverted to, and without repeating them it is sufficient to say they render this contention of the defendant utterly untenable. The learned counsel for the defendant confessed on the argument that upon the facts it must be held that the defendant holds in trust for
397 the company the legal title to the lands purchased with the money of the company and donated for depots and other purposes, and to the telephone purchased and built with the money of the company.

But it is contended that the plaintiff, though found to be a stockholder, cannot enforce this trust and compel a conveyance of the legal title to the corporation, and that any suit for that purpose must be brought by the corporation itself.

Undoubtedly, the general rule is that the company must sue to enforce such trust, but there are exceptions to this rule as well understood as the rule itself, and the case at bar falls exactly within one of these exceptions. It is well settled that a stockholder may enforce in favor of the corporation such a trust as is here conceded to exist, where the defendant holds a majority of the stock and has control of the corporation. An appeal to this corporation to enforce this trust against the defendant would have been nowise different from an appeal to him to sue himself. When, as in this case, the corporation is under the control of the party to be proceeded against its refusal to bring suit may be inferred, and a stockholder may maintain the suit without alleging or proving any demand or express refusal.

3rd Pomeroy Eq. Jur., sec. 1095 and note 1.
Heath *vs.* Erie R'y, 8 Blatch., 347.
Wood's Field on Cor., section 369.

When the jurisdiction of a Federal court is invoked for the protection of the corporation by a stockholder suing in that court, in

virtue of his citizenship, in a case in which the corporation itself could not sue in that court, the bill and proofs must show clearly that a demand on the corporation to sue would be useless or that the corporation expressly or by necessary implication refused to sue, and that the alleged refusal is real and not a mere sham and device to transfer the litigation into the Federal courts through the agency of a non-resident stockholder.

Hawes *vs.* Oakland, 104 U. S., 450.

398 In the case last cited stringent rules are laid down to prevent collusion between the corporation and its stockholders to commit what may be termed a fraud on the jurisdiction of the Federal courts. Such a purpose is required to be negatived very fully by exact and specific allegations which are not demanded for any other purpose.

3 Pomeroy Eq. Jur., sec. 1095, note 1.

In the case at bar the facts preclude any suggestion of collusion or an effort to work into the Federal court a case not within its jurisdiction. The alienage of the plaintiff gives the court jurisdiction. The enforcement of the company's right to these lands is an incident rather than the main design of the suit, the chief purpose of which is to establish and enforce a trust against the defendant in favor of the plaintiff, the value of which would be lessened unless the right of the corporation to this property was also established, and which it was obvious never would or could be done by any other person than the plaintiff, who is the only person interested in enforcing the right.

The defendant appropriated to his own use the following sums derived from the earnings of the road and the sale of its property :

Paid to Alderman on purchase of stock	$5,000
Sale of old material	5,365 50
Invested in private residence	3,481 53
	$13,847 03

The defendant is equitably entitled to a credit on account of his purchase of stock from the defendant for one-third of this sum, viz, $4,615.67. This sum deducted from $8,000, the price plaintiff was to pay for the stock, leaves due of principal $3,324.33. There is no proof on the subject of interest, and it may be doubted whether it ought to be allowed, and if it is allowed the dates of payment are not given with such accuracy as to enable one to make an exact statement of the interest account. Without going into any
399 nice calculation, I think it would be equitable to add two years' interest to this balance, making the whole sum due from the plaintiff on his purchase of stock $3,790.44. The decree will require the defendant, John D., within 90 days, to convey to the company the lands and telephone lines described in the bill. The plaintiff will be required to pay the $3,790.44 to the defendant or his solicitors of record, or into the registry of the court, within

ninety days from this date; and upon the payment of this sum the defendant, John D., will deliver to the plaintiff or his solicitors of record, or deposit in the registry of the court, one-third of all the full-paid stock and first-mortgage bonds of the defendant corporation (less one-third of the amount of stock issued to qualify directors) issued or which ought to be issued to the defendant, John D., upon any account whatsoever, including the stock and bonds earned to date under the construction contract bearing date May 22nd, 1883, and the defendant corporation will be required to do on its part whatever may be necessary to enable the defendant to comply with the decree.

Of the bonds and stock, if any, deposited with the St. Louis, Iron Mountain, and Southern Railway Company as collateral security for the debt due from the defendant company to that company, the plaintiff must be held to have contributed one-third of the amounts deposited, and will not be entitled to receive the third of the bonds and stock so deposited until such debt is extinguished; and the like provision will be made in the case of any other existing deposit of the bonds or stock as security for a corporate debt.

All interest of the plaintiff in the construction contract will be extinguished from this date, because his relation to the road and the defendant, which made it eminently just that he should have that interest, has been dissolved. The defendant, John D., will be required to pay the costs, and the cause will be retained for further orders that may become necessary in the enforcement and execution of the decree.

400 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 26th day of October, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas—the Honorable Henry C. Caldwell, district judge, presiding and holding said court—the following proceedings were had, to wit, on November 3rd, 1886:

PAUL F. BEARDSLEY }
v. } 811.
JOHN D. BEARDSLEY *et al.* }

Come the parties by their solicitors, the complainants by Jones & Martin, and the defendants by A. B. Williams, J. D. Conway, and J. M. Moore, and upon the application of the defendant and in pursuance of the agreement and understanding had at the time the decree herein was rendered, it is ordered that the decree fixing the amount due the defendant, John D. Beardsley, be set aside, and that Thomas H. Simms be, and he is hereby, appointed a master to restate the account between the plaintiff and the defendant, John D. Beardsley, and fix the amount due the said John D. from the

plaintiff for the purchase money of the one-third interest in the stock of the Arkansas and Louisiana Railway Company after allowing the plaintiff all credits to which he is entitled for payments made to said defendant and for money received by defendant by the sale of property of said company or otherwise with which he should be charged, and that he take said account and report the same to the court at the earliest day practicable.

401 And on November 24th, 1886, as follows:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.* } No. 811.

Comes the Arkansas and Louisiana Railway, by J. M. Moore, Esq., its solicitor, and files herein its petition as to the conveyance of property.

Which petition is as follows;

United States Circuit Court, Eastern District of Arkansas.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.*

Comes the Arkansas and Louisiana Railway Company and represents to the court that a portion of the lands held by the defendant, John D. Beardsley, and decreed to be conveyed to this defendant is within and constitutes the city or town of Nashville; that all of the lands so held are in the market, and it is to the interest of the defendant to sell and dispose of the same; that the mortgage heretofore executed to defendant and referred to in the pleadings in this cause will, if said lands are conveyed to this defendant, attach to it, and that said mortgage contains no claim by which the trustee can return or authorize the sale of said lands; that the sale of said lands would be thereby prevented and the growth of town of Nashville, the terminus of defendant's road, would be stopped.

And defendant prays that the order heretofore made be modified, and a trustee be appointed to hold the legal title to said lands, to whom the defendant, John D., be required to convey the same.

J. M. MOORE,
For Ark. & La. R'y Co.

(Endorsed:) Filed Nov. 24th, 1886. Ralph L. Goodrich, clerk.

402 And on December 24th, the following proceedings were had, to wit:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.* } 811.

Comes Thomas H. Simms, master herein, and files his report; which report is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas. Nov. Term Thereof, 1886.

Master's Report.

PAUL F. BEARDSLEY, Plaintiff,
v. } 811.
JOHN D. BEARDSLEY and THE ARKANSAS AND LOUISIANA RAILWAY COMPANY, Defendants.

To the Hon. Henry C. Caldwell, judge:

I have the honor to report that in obedience to the order of your honorable court, made on the 25th day of October, 1886, directing me to "restate the account between the plaintiff and the defendant," John D. Beardsley, and fix the amount due the said John D. Beardsley from the plaintiff for the purchase-money of the one-third interest in the stock of the Arkansas and Louisiana Railway Company, after allowing the plaintiff all credits to which he is entitled for payments made to said defendant and for money received by defendant from the sale of property of said company, or otherwise, with which he should be charged," and to state said account and report the same to your hon. court at the earliest day practicable—

403 I have carefully read the papers in this cause so far as they refer to items of account, and have found it necessary to take the deposition of one witness only, that of Vinton Alderman, which was necessary to establish the rate of interest and date from which it run on his sale of stock to the defendant, John D., as the sale by the said John D. to the plaintiff was made to conform thereto, as shown by the record.

The deposition of this witness (herewith filed and marked Exhibit A) states positively that the sale by him to the defendant, John D., of his stock in the Washington and Hope railway was made on the 10th day of November, A. D. 1881, and drew interest at the rate of eight per cent. (8) from date of sale, and I therefore charge the plaintiff, Paul F. Beardsley, with the sum of eight thousand dollars ($8,000), the amount of his purchase of stock from the defendant, as of date November 10th, 1881, and with interest thereon from that date, at the rate of eight per centum per annum, up to this date, December 24th, 1886, making the sum of his purchase and interest thereon amount to the sum of eleven thousand two hundred and seventy-eight and $\frac{22}{100}$ dollars ($11,278.22), with which I charge him on Exhibit B herewith.

This being the entire amount with which the plaintiff is chargeable, I now charge the defendant, John D. Beardsley, with such sums as under the decree and depositions herein I find him to be properly chargeable, and in doing so I will deal first with the item of five thousand five hundred and eighty-seven and $\frac{53}{100}$ dollars ($5,587.53), shown by the deposition of H. H. Wheless, auditor of the Arkansas and Louisiana Railway Company, to have been to the personal and

individual credit of the defendant, John D. Beardsley, on the books of his office on May 31st, 1886.

This credit was composed of the following items, as shown by the books of the auditor (copies of which I have) and the deposition of H. H. Wheless, to wit:

404	Old material sold	$4,732 50
	Baltimore & Ohio checks { 433 00 / 200 00 }	633 00
	Goods returned to St. Louis previously charged to defendant	12 03
	A stave machine sold by Alderman	200 00
	One office lounge	10 00
	Total of	$5,587 53

And the defendant had drawn against this credit up to the same date (May 31st, 1886), as shown by Wheless' deposition, the sum of five thousand and thirty-four and $\frac{7}{100}$ dollars ($5,034.07), which has since been increased by other debits to the sum of five thousand one hundred and ten and $\frac{27}{100}$ dollars ($5,110.27), as shown by a personal inspection of the books by me, copies of which I have subject to inspection. These credits were taken by the defendant on the auditor's books over two years before the beginning of this suit, and at a time when no good reason has been or probably could be shown why an incorrect entry or false entry should be made, so far as I am able to ascertain, and while the plaintiff in his deposition denies that the two Baltimore and Ohio checks ever passed into the funds of the company to the best of his knowledge and belief, yet the defendant, John D., states positively that the proceeds of both checks did actually pass into the company's funds, and his statement is strengthened and fortified by that of Mr. Wheless, who states that in opening the auditor's books January 1st, 1884, he was instructed by the defendant to so enter them, he stating that the proceeds had so passed to the company, and as no motive has been shown why the defendant should at that time, if at all, cause incorrect or false entries to be made, and I feel satisfied and conclude that the net proceeds of these two Baltimore and Ohio railway checks did really pass into the hands of the company some time in the early part of the year 1882, but the net proceeds of the larger check are incorrectly stated (the railway books being burned in 1883 and the defendant stating the amount from
405 memory) and should be for four hundred and eight dollars ($408.00) instead of four hundred and thirty-three ($433.00), as I have in my possession a letter from the general auditor of the B. & O. Railway Company, dated Nov. 29th, 1886, and marked Exhibit C hereto, stating that the check was drawn January 21st, 1882, for $533.00, and there being charges of one hundred and twenty-five dollars ($125.00) against it, as shown by the depositions of the plaintiff, the net amount should be four hundred and eight dollars ($408.00) instead of $433.00, making the net proceeds of the two checks amount to $608.00.

I therefore deduct from the defendant's debits or amounts drawn from the road by him of $5,110.27 the net amount of these two railroad checks, say $608.00, as these were private funds put into the treasury of the road by the defendant and could be withdrawn therefrom without being chargeable to the plaintiff or any one else for any part thereof, and being deducted leaves the sum of four thousand five hundred and two and $\frac{27}{100}$ dollars ($4,502.27) as the net amount drawn out of the funds of the road against said credits, in which the plaintiff has a one-third interest under the decree. The remaining balance to the credit of the defendant on this account is undrawn and has been passed to the credit of the company on the auditor's books in my presence, and the account of the defendant, John D., has been and is now closed on said books.

I therefore charge the defendant, John D. Beardsley, with the one-third of the sum so drawn from the funds of the company, viz., $4,502.27, the one-third part thereof being $1,500.75, as shown by Exhibit "D" hereto, and as the items composing this debit were not drawn by the defendant until the years 1884, 1885, and 1886 (Wheless fixes them between April 28th, 1884, and May 31st, 1886), the largest item being charged in July, 1885. I charge the defendant with interest thereon at 8% from August 1st, 1885, to December 24th, 1886, that being a mean date as near as I can read-
406 ily fix it, as shown by the dates of the items composing the account which has been copied from the auditor's books for me. The testimony of Mr. Wheless (as well as the account itself) shows conclusively that the cost of the dwelling erected by the defendant, John D., in the town of Washington is included in the debits to his account as herein dealt with and should not again be charged to him. I also charge the defendant, Jno. D., with one-third of the sum of forty-eight hundred dollars ($4,800.00) paid by the railway company to Vinton Alderman on a personal debt due him by the defendant in which the plaintiff had no interest, which debit, with proper dates and items composing it, will appear by reference to Exhibit "D" herewith, interest being charged on each item from date until Dec'b'r 24th, 1886, at 8% per annum.

Mr. Wheless testifies that the sum of fifty-five hundred dollars had been paid to Mr. Alderman, two hundred of which were the proceeds of the sale of a stave machine belonging to the defendant and five hundred dollars the personal acceptance of the defendant, John D., not then due. The stave machine being the private property of the defendant and its proceeds being paid to Mr. Alderman on a personal debt due him by the defendant, I am unable to see wherein the plaintiff has any interest therein that should be made the subject of a charge agaist the defendant, and the acceptance of $500, given Alderman by the defendant, maturing July 26th, 1886, was in fact paid by the company when due, as shown by the auditor's books, but the defendant reimbursed railway's treasury for this sum on November 5th, 1886, by paying into the treasury of the company that much money, which was properly and regularly credited by the treasurer on the account of the railway company, these two items, therefore, of stave machine, $200, and personal payment of

$500 by the defendant accounting for and equalling the difference between the amount testified by Wheless to have been paid to Alderman, viz., $5,500, and the sum herein charged to the defendant as having been paid to him out of the funds of the company, viz., $4,800.00.

407 The entry covering this $500 returned to the railway treasury by the defendant was seen and inspected by me in person on both the journal and ledger containing the accounts of the treasurer, and is dealt with from personal knowledge, not hearsay, and under this state of case I did not think it necessary to take the deposition of the treasurer, W. H. Carruth, to establish it further.

The cotton-seed transactions referred to in the depositions of plaintiff, defendant, and H. H. Wheless are not sufficiently clear and satisfactory to my mind to warrant the charge of any part thereof to the defendant in this account, and I omit any mention of it among the items so debited to him.

The whole amount charged herein to the defendant, John D. Beardsley, as being due to the plaintiff, with interest added, amounts to the sum of three thousand five hundred and twenty-one and $\frac{93}{100}$ dollars ($3,521.93), see Exhibit "D," which deducted from the amount due to the defendant by the plaintiff of eleven thousand two hundred and seventy-eight and $\frac{22}{100}$ dollars ($11,278.22), see Exhibit "B," leaves as due to the defendant, John D. Beardsley, by the plaintiff, Paul F. Beardsley, on the 24th day of December, 1886, the sum of seven thousand seven hundred and fifty-six and $\frac{29}{100}$ dollars ($7,756.29), with which I now charge him and so report to the court.

Additional depositions of W. H. Carruth, H. H. Wheless, and the defendant, John D. Beardsley, taken on behalf of the defendant on the 2nd day of December, 1886, before John H. Arnold, a notary public of Hempstead county, were sent me through the mail and opened and filed on the 4th inst. and marked Exhibit "E" to this report; but if I understood aright the verbal instructions of the court given me at chambers since my appointment, concerning the scope of my powers and authority in restating the account in this case, I am not permitted to take depositions generally, but only on the item of interest on the purchase by the defendant from Vinton Alderman,

408 thus fixing the same rate and date between the plaintiff and defendant, that being open in the record of this case, and that I should confine myself to such items only as were referred to in the papers at the date of the decree; hence I have not considered these depositions in stating this account.

For a like reason I have refrained from considering the testimony of the defendant, John D., and others as to a debt due him by the railway company for material, &c., furnished by him and used in the railroad prior to the date of the sale of the stock by him to the plaintiff, being informed by your honor that the decree rendered herein fixed the status of both parties—plaintiff and defendant—on that date, viz., Nov. 10th, 1881, and I could only deal with transactions subsequent to that time in stating this account, and for like reasons and under instructions received from the court I omit to charge the plaintiff with any portion of certain sums shown by the

proof in the case to have been overdrawn from the treasury of the company on salary account by him, and do not refer to them in the account.

Having faithfully, impartially, and to the best of my ability performed the work assigned by the court, I respectfully submit this report and asked to be discharged from further duty in connection therewith.

Very respectfully, THOS. H. SIMMS, *Master.*

Little Rock, Ark., Dec. 24th, 1886.

409 EXHIBIT "A" TO MASTER'S REPORT.

Int. 1. What was the date of the sale by you to John D. Beardsley of your stock or interest in the Washington and Hope Railway Company?

Int. 2. What rate of interest was Mr. Beardsley to pay on said purchase?

Int. 3. From what date was he to pay interest?

Answer to Int. 1. Date of sale to J. D. Beardsley was November 10th, 1881.

Ans. to Int. 2. The rate of interest was eight per cent.

Answer to Int. 3. Interest ran from date of sale.

VINTON ALDERMAN.

Cross-Interrogatories by the Complainant.

Question 1. In your answer to question twenty in your deposition in this cause, taken on June 23rd, 1886, you say, "There were really no negotiations. The first intimation that I had that J. D. Beardsley would buy the stock was a letter saying he would take my interest at twelve thousand dollars if I would grant a credit on it. I wrote him at once that I would do so, and that I considered it sold to him. I have been paid in cash and notes about fifty-five hundred dollars. One note of five hundred dollars is not yet due. The balance on the purchase J. D. Beardsley still owes me." Now, in that letter from J. D. Beardsley to you saying "he would take your interest for twelve thousand dollars," or in reply to him saying "you considered it sold to him," was there anything said about interest being paid or the rate of interest that should be paid? Answer yes or no.

410 Question 2. If in your answer to question No. two propounded by the defendant herewith you say that there was any rate of interest agreed upon between you and J. D. Beardsley upon the purchase of your interest in the Washington and Hope railway, state definitely when this agreement was made, whether in writing or by letter or verbally, and attach copies of any letters that have passed between you and him, referring to interest, either before or since January first, 1886. If you cannot give dates accurately give them as nearly as possible.

Question 3. Is it not true that there was no agreement at that

time—that is, the time when the sale was made—about the rate or time from which interest should run? Answer this yes or no.

Answer to cross-int. 1. Yes; as I remember, I wrote him that the credit would bear eight per cent. interest; that I was paying eight per cent. then on money I had borrowed to put in the road.

Answer to cross-int. 2. I have no copies of my letters. The sale was made by letter and the interest required stated. Soon after we had a personal interview, and J. D. Beardsley made exceptions to the rate of interest, but I declined changing from eight per cent. He had and still has a residence and some real estate in the town of Cairo, West Va. He had some machinery at the same place, and I understood he had other property in Eastern Va. Some time after I had sold him my stock in the Washington and Hope railway he endeavored to pay me in part or in whole by selling me property. I did not want my pay in this way. J. B. Beardsley then endeavored to have me consent to reduce the rate of interest to six per cent., but I never agreed to do so.

Answer to cross-question 3. My answer to the previous question answers this.

VINTON ALDERMAN.

411 STATE OF ARKANSAS, *County of Pulaski:*

We, the solicitors répresenting the complainant and the defendants in the cause now pending in the United States circuit court for the eastern district of Arkansas, wherein Paul F. Beardsley is complainant and John D. Beardsley and others are defendants, hereby agree that the deposition of Vinton Alderman may be taken upon the foregoing interrogatories and cross-interrogatories before any officer authorized to take depositions, under the laws of the United States, and that the same may be read as evidence upon the hearing of this cause before the master appointed by said court to state the acount herein between the complainant and the defendant, John D. Beardsley; and that when so taken the same shall be subject to objections only of incompetency or irrelevancy.

Done at Little Rock, Ark., this the 1st day of December, 1886.

JONES & MARTIN,
For Complainant.
J. M. MOORE,
For Defendants.

STATE OF WEST VA., *Wirt County,* } *ss:*

I, R. C. Tucker, a notary public in and for the county and State aforesaid, do certify that Vinton Alderman signed and made oath to the truth of the answers to foregoing interrogatories before me, in my presence, this 14th day of December, 1886.

[SEAL.] R. C. TUCKER,
Notary Public.

Received, opened, and filed Dec. 18th, 1886.

THOMAS H. SIMMS, *Master.*

412 EXHIBIT "B" TO MASTER'S REPORT.

Paul F. Beardsley to John D. Beardsley, Dr., on account of purchase of stock in the Washington and Hope Railway Company; interest computed, at 8% per annum, from date of purchase to December 24th, 1886.

Date.	Item.	Principal.	Time. Y's.	Mo.	D's.	Interest.
1881. Nov. 10	To purchase of $33,250 stock Washington and Hope Railway Co. See 2nd deposition of J. D. B., page 8, & P. F. B., pages 4, 5, & 7	8,000	5	1	14	3,278 22

Recapitulation.

Principal	$8,000 00
Interest	3,278 22
Total	11,278 22
MEMO.—Deduct total, Exhibit D	3,521 93
Balance due defendant December 25th, 1886	7,756 29

413 EXHIBIT "C" TO MASTER'S REPORT.

Subject: Payment to John D. Beardsley, $533.00.

Baltimore and Ohio Railroad Company, accounting department, office of general auditor.

W. T. Thelin, gen. auditor; W. N. Buchanan, auditor of revenue; A. F. Dunlevy, auditor of disbursements.

BALTIMORE, *Nov. 29th*, 1886.

Thomas H. Simms, Esq., master in U. S. circuit court for the eastern dist. of Ark., Little Rock, Ark.

DEAR SIR: In reply to your favor of the 26th, I beg to state that the payment to Mr. John D. Beardsley was made on the 21st of January, 1882, $533.00, warrant 2555, in settlement of bill for 41,000 ft. 1½-inch oak boards at $13.00 per thousand.

Respectfully, W. T. THALIN,
Gen. Auditor.

EXHIBIT "D" TO MASTER'S REPORT.

John D. Beardsley to Paul F. Beardsley, Dr., on account of moneys, &c., drawn from the funds of the Arkansas and Louisiana Railway Company, one-third ($\frac{1}{3}$) of which is due the said Paul F. Beardsley under decree of court; interest calculated, at 8% per annum, from date of items to Dec. 24th, '86.

414 Date.	Items.	Principal.	Time. Yrs.	Mo.	Days.	Interest.
Aug. 1st, 1885	$\frac{1}{3}$ of 4,502.27 drawn on old-material credit. See master's report	1,500 75	1	4	24	168 09
Dec. 25, 1882	$\frac{1}{3}$ of $250 paid Alderman	83 33	3	11	29	26 65
Aug. 10, 1883	$\frac{1}{3}$ of 500 " "	166 67	3	7	14	48 30
Sep. 15, 1883	$\frac{1}{3}$ of 500 " "	166 66	3	3	9	43 67
May 3, 1884	$\frac{1}{3}$ of 750.00 " "	250 00	2	7	21	52 83
April 9, 1885	$\frac{1}{3}$ of 500 " "	166 67	1	8	15	22 78
Nov. 21, 1885	$\frac{1}{3}$ of 500.00 " "	166 66	1	1	3	14 55
Jan. 11, 1886	$\frac{1}{3}$ of 500.00 " "	166 67		11	13	12 70
" 15, 1886	$\frac{1}{3}$ of 300 " "	100 00		11	9	7 53
" 19, 1886	$\frac{1}{3}$ of 300 " "	100 00		11	5	7 44
" 28, 1886	$\frac{1}{3}$ of 500 " "	166 66		10	26	12 07
Feb. 15, 1886	$\frac{1}{3}$ of 200 " "	66 67		10	9	4 58
		$3,100 74				421 19
	Add interest	421 19				
	Total	$3,521 93				

EXHIBIT "E."

Depositions of W. H. Carruth, H. H. Wheless, and J. D. Beardsley.

Notice to take depositions.

To Paul F. Beardsley or his attorney:

Take notice that in a case pending in the circuit court of the United States for the eastern district of Arkansas, in chancery, wherein you are the plaintiff and John D. Beardsley and others are defendants, I shall proceed, on the 2nd day of December, 1886, between the hours of nine a. m. and five p. m. *at* said day, at the office of the Arkansas and Louisiana Railway Company, in the depot house, in the town of Washington, in the county of Hempstead, in the State of Ar-
415 kansas, to take depositions of witnesses to be read as evidence before Thomas H. Simms, Esq., special master in said cause, when and where you may attend if you think proper; and the taking of depositions under this notice, if not completed on said day, will be continued over from day to day thereafter at the same place and between the same hours until concluded.

Given this 29th day of November, 1886.

J. B. BEARDSLEY,
By J. M. MOORE, *Attorney.*

We hereby acknowledge that a copy of the within notice was served on us the 30th day of November, 1886, at the city of Little Rock, State of Arkansas.

JONES & MARTIN,
Att'ys for P. F. Beardsley.

Filed before depositions this 2nd day Dec., '86.

JNO. H. ARNOLD, *Not. Pub.*

STATE OF ARKANSAS, }
Hempstead County. }

Depositions of witnesses taken and subscribed before me, Jno. H. Arnold, an acting and duly commissioned notary public in and for the county of Hempstead and State of Arkansas, on the 2nd day of December, 1886, between the hours of nine a. m. and five p. m. of said day, at the office of the Arkansas and Louisiana Railway Company, in the depot house, in the town of Washington, in the aforesaid county and State, in pursuance of the notice hereto annexed, and to be read in evidence before Thomas H. Simms, special master, in a certain cause now pending in the circuit court of the United States for the eastern district of Arkansas, in chancery, wherein Paul F. Beardsley is plaintiff and John D. Beardsley and others are defendants, on part of plaintiff.

416 W. H. CARRUTH, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the action aforesaid, did then and there on his oath aforesaid depose as follows, to wit:

My name is William H. Carruth, and I am fifty-one years old, and live in Washington, Hempstead county, Arkansas.

Int. 1. Do you keep the account of the Arkansas and Louisiana Railway Company and receive and disburse the money of that company as treasurer, and have you done the same for the Arkansas and Indian Territory Railway Company and for the Washington and Hope Railway Company?

Ans. I do and have.

Int. 2. At what time was the Washington and Hope railway first opened for business?

Ans. I find by reference to my cash account that I received the first earnings from the road on April 18th, 1880.

Int. 3. Has the road been opened for business ever since, and have the earnings of that road and its successors gone continuously into the general funds coming to your hands as treasurer?

Ans. As far as I know they have.

Int. 4. Has J. D. Beardsley managed the road during the whole

period? And, if so, please state if you know the amount of his salary.

Ans. J. D. Beardsley has managed the road from the beginning. His salary was fixed by the board of directors at $2,000 per year, and so remained up to December 1st, 1883, and since Dec. 1st, 1883, his salary has been $200 per month.

Int. 5. Do you know whether he has drawn the full amount of his salary from the funds of the road; and, if not, do you know
417 how much is due him? State as nearly as you can.

Ans. During the time his salary was at $2,000 per year the road was unable to pay, and he got or was paid but a part of the amount that was due him. As to the exact amount paid him I cannot say, but in my opinion less than half the salary allowed him was ever paid to him up to Dec. 1st, 1883, since which time his salary has been paid regularly at $200 per month up to August, 1886.

Int. 6. Do you know what Mr. Paul Beardsley's salary has been since he came to the road, and do you know of any overdraft by him from the funds of the road?

Ans. Mr. Paul Beardsley began to draw his salary from me Dec. 1st, 1883, at which time his salary was made $100 per month. He overdrew his account the first month about $39, and his overdrafts continued throughout the next year, and his overdrafts, though not charged directly to the road on my books, was always checked against the cash of the road in my hands, and in Dec., 1884, his debit balance was about $187, when, by order of J. D. Beardsley, I charged the road and credited Paul F. Beardsley with the amount to balance his account. Major J. D. Beardsley told me once or twice during that year that I must curtail Paul F. Beardsley's overdrafts, and when he finally told me to charge the road with the overdrafts he put me on notice that I would have to carry any overdrafts made by Paul F. Beardsley if I permitted him to make them in the future.

WILLIAM H. CARRUTH.

And at the same time and place before me also appeared H. H. WHELESS, a witness known to me to be of lawful age, —, being to me at the time and place aforesaid produced and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the action aforesaid, did there and then on his oath aforesaid depose as follows, to wit:

418 Int. 1. Are you auditor of the Arkansas and Louisiana railway; and, if so, how long have you occupied that position?

Ans. I am and have been since January, 1884.

Int. 2. Is the account, debtor and credit, of J. D. Beardsley exhibited taken from your books and marked Exhibit "A?"

Ans. The debit part of the account is all taken from my books. Of the credits that for old material ($4,732.50), that for money from the Baltimore and Ohio railroad ($633.00), and for office lounge ($10.00), stave machine ($200.00), and an item of goods returned to

St. Louis ($12.03) are taken from my books. The balance of the credits are taken from Mr. Carruth's books and other accounts, except the lumber trucks, chairs and desk, and hotel furniture, which was turned in to me by J. D. Beardsley. It is in my personal knowledge that the furniture charged as sent to the hotel was furnished by J. D. Beardsley and belonged to him. J. D. Beardsley's entire debit on my books is $5,110.27. This includes all moneys drawn by him for the purpose of building his house at Washington, and includes all the moneys ever drawn by him from the company funds within my knowledge, except his salary, which he has drawn through the treasurer. J. D. Beardsley's account on my books is now closed and balanced. There was a balance to his credit on my books, but after the rendering of the decree in this case, in which the credit for old material was disallowed, he directed the balance credited back to the road, which was done and his account closed. The credits for donation notes are entered as taken from the treasurer's books, and the date of each, as I understand, shows the date of the payment.

Int. 3. Have you handled the money received and expended in connection with the purchase of cotton seed in 1884, 1885, and 1886; and, if so, for whom did you receive the money and for whose account did you do the business?

Ans. I handled the money used in that business, and it came to me from J. D. Beardsley, and I understood it was for his personal account.

419 Int. 4. Did you make a settlement of the cotton-seed account with the agent of the Little Rock Oil and Compress Company; and, if so, for whom were you acting?

Ans. I did make the settlement with the agent, and understood that I was acting for J. D. Beardsley.

Int. 5. Do you know what the understanding of the Little Rock Oil and Compress Company and of their agent was. If so, state it, and upon what you base your knowledge and opinion.

Ans. I understood that the company regarded it as a transaction personal with Major Beardsley. My first reason for believing this is that all the account sales of cotton seed were made out by the Little Rock Oil Company in the name of J. D. Beardsley and sent to him personally, and about the time of the second settlement Major Haynes, their general manager, told me that they had always regarded it as a personal matter with Major Beardsley.

Int. 6. When the money resulting from the cotton-seed transactions was turned over to J. D. Beardsley and Paul Beardsley it appears to have been paid on vouchers the same as the funds of the road. Explain this.

Ans. I just turned the money received into the treasury and kept the accounts on my books for my own convenience. Major Beardsley did not tell me to do this, nor did I consult him in regard to it. The cotton-seed business substantially terminated in February, 1886, very little seed being bought after that time. At that time there was remaining in the hands of the treasurer between $2,400.00 and $2,500.00 of the money furnished to buy cotton-seed; $500.00 of this

was returned to J. D. Beardsley on March 28th, 1886; $540.15 was returned to Little Rock Oil Company about the first of June, and the balance, $415.92, was returned to J. D. Beardsley about the same time.

Int. 7. What amount has been paid to Alderman on account of J. D. Beardsley's purchase of stock from him from the funds
420 of the road since you came, and how much, if any, was paid him before you came?

Ans. There has been $3,650.00 paid to Alderman from the funds of the road since I came; also a payment of $200 by a stave machine belonging to J. D. Beardsley, which was charged to Alderman and credited to J. D. Beardsley. By instruction of J. D. Beardsley I charged Alderman with $1,250.00 as paid before I came to the road. I do not know whether this was paid from the funds of the road or not.

H. H. WHELESS.

And at the same time and place before me also appeared J. D. BEARDSLEY, a witness known to me to be of lawful age, — being to me at the time and place aforesaid produced and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the action aforesaid, did then and there on his oath aforesaid depose as follows, to wit:

My name is John D. Beardsley, and I am forty-nine years old, and reside in Washington, Hempstead county, Arkansas.

Int. 1. Take up the items in your account marked Exhibit "A" and attached as an exhibit to H. H. Wheless' deposition and explain them *seriatim* to the master.

Answer. My first credit is for a lot of railroad material which I originally bought in Tennessee in July, 1879, about three months before I contracted with the Washington and Hope Railway Company to build the road and about five months before I agreed with Mr. Alderman to associate him with me in the enterprise. Under my agreement with Mr. Alderman he would have owed me for one-half of the material when he got the stock. When I bought Mr. Alderman's stock for $12,000 it was understood that this was net to him, and that it settled all matters between him and myself in connection with this enterprise.

When I agreed to sell Mr. Paul Beardsley stock it was thoroughly understood that he paid for his stock substantially at the
421 same rate I had paid Mr. Alderman for his stock, exclusive of this material, and it was understood that the road would owe me for the material. At the time the credit was made, however, it had no reference to Mr. Paul Beardsley or his purchase. In June or July, 1883, I arranged to let the Iron Mountain Railway Company have one-half of the stock of the Arkansas and Louisiana railway, and soon afterwards I assigned to Mr. Geo. C. Smith, for the Iron Mountain Railway Company, the one-half interest in the construction contract. I made this transaction originally with Mr. R. S. Hayes, then first vice-president and general manager of the

Iron Mountain railway, and I stipulated at the time and Mr. Hayes agreed that I should be paid for the material which I had owned previous to my connection with the Washington and Hope Railway Company.

The books in which this account is were opened by Mr. Wheless in January, 1884. These books, as I understood and as I at that time instructed Mr. Wheless, represented myself and the Iron Mountain Railway Company, and the credit was made in accordance with my understanding with Mr. Hayes. At that time no reference had been made since January 1st, 1882, by Mr. Paul Beardsley to his purchase of stock or any interest in the road, and I had no thought of him in the transaction with the Iron Mountain or in subsequently taking the credit. He knew of the credit at the time and made no exception to it. In my understanding with Cap. Hayes no price was set upon the material. It was a question with me whether I should take credit for it at the price it was worth when first put in the road or at the price obtained for it afterwards as old material. I decided on the latter. I took Mr. Paul Beardsley's opinion on that matter, and he concurred with me in regard to it.

The credit of $36.00 for a desk is for an office desk that belonged to me in Cairo, West Va. It cost $36.00 at the factory. I brought it from Cairo at my own expense. It was used by the company in the depot at Washington; was burned in the depot in Nov., 1883. I was never paid for it, and I was never credited with it until recently.

422 The money credited to me as from the Baltimore and Ohio Railway Company is the results of an old claim arising from transactions with them principally in lumber in the years of 1875, 1876, and 1877.

They owed me a considerable sum and I was never able to obtain a settlement or collect it. In 1881 a party in Indianapolis of whom I had never before heard wrote me saying he knew of this claim and would collect it for a commission. I consented and he obtained a settlement and they gave him their check to my order for the amount of the debt without interest. This check was sent to me subject to a C. O. D. charge of $125.00 for collection. I converted the check into money and put the money into the general funds of the road. This was in 1882. The entry of the money was made at that time on the books kept at the depot at Washington by the agent, John Burt. These books were burned in the depot in November, 1883, and when Mr. Wheless opened the present set of books in 1884 I gave him the credits from my memory. The first credit of $433.00 was intended to be the net proceeds of the check just spoken of after paying the $125.00 for collection. I think the amount is substantially correct. My impression is that the gross amount of the check was between $550 and $560. The other credit of $200 from the Baltimore and Ohio was paid to me personally at the company's office in Baltimore as a full settlement for interest and all other claims that I might have against the company. This last-named sum went into the funds of the road and was entered on

the books. Both of these amounts were received and converted to the use of the road after Mr. Paul Beardsley had made the purchase of stock.

The credit for trucks, chains, wheels, &c., is for material that belonged to me personally. I brought this material from Cairo, West Va, for use in construction of the road and it remained on my hands after the construction was finished. I sold it for the amounts credited and converted the money to the use of the road after I had agreed to sell Mr. Paul Beardsley the stock.

The item of $12.03, September 22nd, 1884, is for goods charged me on the debit side of my account, but afterwards were returned.

423 The credit of $200 of October 1st, 1884, is for a stave machine which Mr. Alderman sold out of a lot of machinery I have in West Va. I directed Mr. Alderman to keep the proceeds on account of my indebtedness to him and directed Mr. Wheless to charge the amount to Mr. Alderman and credit me with the amount on the books.

The credit of $237.47 on the 10th of November, 1884, was for a lot of old railroad iron which belonged to me personally in West Va. I sold it to the St. Louis Bolt and Iron Company and the net proceeds went to the credit of the Arkansas and Louisiana Railway Company in their settlement with the St. Louis Bolt and Iron Company about Nov. 10th, 1884.

The credit of $10.00, September 30th, 1885, is for a lounge which belonged to me and was taken from my house and was sent to the company's office for use there about that time.

The credit of $110.00 on February 10th, 1886, is for furniture which belonged to me. The company had undertaken to furnish the hotel at Nashville and it was desired to make the cash outlay as small as possible. I had this furniture not in use and it was suitable for the hotel and it was sent there. It was charged at less than cost, and it was worth fully the price put upon it.

The donation notes are those given me by the Washington and Hope Railroad Company as a part consideration for the building of the road. I acquired and owned these notes before Mr. Paul Beardsley ever came to Washington. I pledged them, as well as my own individual note, to the St. Louis Bolt and Iron Company to secure the indebtedness of the road to that company. The proceeds of a good many of them went towards paying the St. Louis Bolt and Iron Company, and the proceeds of the balance went into the general funds of the road as collected. The date opposite each note indicates when the proceeds of that note was obtained. Referring to the debit portion of my account, this account, amounting to $5,110.27, is correct. This includes all the money expended in building my house at Washington and all the money received by me from the funds of the road, so far as I know, for any

424 purpose whatever, except the money paid Mr. Alderman and money drawn by me on account of my salary. There is also due me from the Arkansas and Louisiana railway a large balance for unpaid salary during the time I managed the Washington and

Hope railway. My salary was fixed by the directors of that company at $2,000 per year.

The financial condition of the Washington and Hope railway was such that I could not draw the salary without crippling it. There is at least $2,500 due me on this account for the time I managed the Washington and Hope railroad, and which is a liability on the Arkansas and Louisiana railway. In addition to this I have at different times received money resulting from accounts and balances due me before I came to Arkansas and for sales of property in West Va., and have used more or less of this money in the services of the road. This was principally done in the years of 1881 and 1882, at a time when the earnings of the road was very small and the use of money very important. The entries of these transactions were made on the books of the agent at Washington, and these books were burned November, 1883. I could not say what the aggregate amount might have been, but I know that it was over $500, outside of any credits now on the books, and it may have been as much as $1,000.

Int. 2. The memorandum of a sale you gave Mr. Paul Beardsley sets forth that he was to pay you interest from the same time and at the same rate as your purchase from Mr. Alderman. What was the date from which you were to pay Mr. Alderman interest and what was the rate of interest?

Answer. My purchase from Mr. Alderman bore interest from the date it was made, which was November 10th, 1880, and the rate was 8% per annum. Mr. Alderman wrote me at the time that he would sell me the stock and give me a reasonable time to pay for it, but that he would require me to pay interest at the rate of 8% per annum, as he was himself borrowing money at that rate. At
425 the time I took no exception to the rate of interest, because I expected to see him in a few weeks and I believed I could then close the matter with him by selling him property I had in West Va. and elsewhere. I afterwards met him in West Va. and endeavored to do this, but, though I offered him real-estate and other property very low, he would not take his pay in that way. I then endeavored to have him consent to a reduction of the rate of interest to six per cent., but he would not agree to that.

Int. 3. What do you say in your reference to the items of $400 and $187 which you charge against Mr. Paul Beardsley?

Answer. Mr. Paul Beardsley was employed by the Washington and Hope Railway Company, at a salary of $75 per month, about the 5th or 6th of November, 1881. He overdrew his salary from the first. In December, 1882, I footed up the amount of his overdrafts and it was over $250. When the depot and books were burned in November, 1883, his overdrafts amounted to over $400. In December, 1883, I advanced his salary to $100 per month and directed that he draw no more money from the agent. I instructed the treasurer to pay him his salary of $100, monthly. It was not my intention that he should overdraw again, but he did so, and I found his overdrafts constantly checked against our cash during the year 1884. In the latter part of December, 1884, I ordered his account balanced and the amount which he had overdrawn, about $187, charged to the road,

and notified the treasurer he would not be allowed for any overdrafts which he permitted thereafter.

I file herewith and make an exhibit of Mr. Paul Beardsley's overdrafts and mark it Exhibit B.

J. D. BEARDSLEY.

STATE OF ARKANSAS, *Hempstead County:*

I, John H. Arnold, an acting and duly commissioned notary public in and for the county of Hempstead, in the State of Arkansas, do hereby certify and make known that the foregoing depo-
426 sitions of William H. Carruth, H. H. Wheless, and J. D. Beardsley were taken before me on the 2nd day of December, A. D. 1886, between the hours and at the place in the caption hereof above mentioned; that the said witnesses, William H. Carruth, H. H. Wheless, and J. D. Beardsley, above named, were severally first duly sworn that the respective testimony they should severally give in the action named and mentioned in said caption should be the truth, the whole truth, and nothing but the truth, before their respective testimony in said depositions or any part thereof was given; that the testimony of each of said witnesses was reduced to writing by me, read to and subscribed by each and all of them, severally and respectively, in my presence at the time and place aforesaid; and that the plaintiff in said action *in said action* was not present nor was any of the defendants present nor represented by attorney except J. D. Beardsley, who was present in person, and that said witnesses are residents of the county of Hempstead, in the State of Arkansas.

In testimony whereof I, John H. Arnold, acting and duly
[SEAL.] commissioned notary public as aforesaid, do hereunto set my hand and seal of office this 2nd day of December, A. D. 1886.

JOHN H. ARNOLD,
Notary Public.

To John H. Arnold, N. P., for taking these depositions, $5; paid by J. D. Beardsley.

JOHN H. ARNOLD, *N. P.*

427 EXHIBIT B, *and* Referred to in Deposition of J. D. Beardsley.

P. F. Beardsley in Account with Arkansas & La. Railway.

		Days.	Int. to Dec. 1, '86.
To overdraft on salary to Dec. 1st, 1883	$400 00	1,095	73 00
" " " " " Jan. 1st, 1885	187 76	699	21 78
			94 78
To interest to Dec. 1st, 1886	94 78		
Amount due	$682 54		

EXHIBIT A, Referred to in Deposition of H. H. Wheless.

J. D. Beardsley in Account with the Arkansas and Louisiana Railway.

				Days.	Int. to Dec. 1, '86.
1884.					
April	28	To Mound City P. & C. Co. for paint	$30 00	946	4 73
June	11	" M. M. Beck, for fire-brick	11 00	902	1 65
July	16	" cash sent Mrs. B. from St. Louis	100 00	867	22 54
		" " used by self in " "	56 07	867	
	22	" Justus Bros., lumber for house	25 88	861	3 73
	31	" freight on material for house	17 60	852	2 40
Aug.	1	" Mound City P. & C. Co., for varnish	13 20	851	1 84
"	28	" " " " " "	4 35	824	55
Sep.	12	" St. Louis H. & C. Co., locks, &c.	17 18	809	2 29
"	15	" Hope Lumber Company, lumber for house.	8 80	806	1 04
"	17	" Mound City P. & C. Co., for varnish	5 75	804	67
Oct.	15	" am't paid Moore & Holman	7 10	776	90
"	22	" M. M. Buck, fire-brick	36 00	769	4 61
	27	" Do., Lumber Co.	5 35	764	62
1885.					
June	17	" cash handed for voucher 472	625 00	531	11 06
July	31	" Baird & Carruth, for money used in building house.	2,765 57	487	224 66
		" freight on material for house	2 97	487	
428					
1885.					
Sept.	28	Paid Taylor & Co. car hinges, voucher 581	235 20	438	17 15
	20	" J. H. Cram, for lounge	31 00	428	2 21
Oct.	28	" sewer-pipe and cement for house	11 06	418	76
	20	" Carruth & B., wire fenders, &c	9 65	406	64
Nov.	30	" money sent Richard Poole	327 26	365	19 88
1886.					
Jan.	5	" " " S. C. B. Figsres	25 00	328	1 70
"	22	" Burrell C. & Co., table	18 00	311	93
"	26	" Tyler Desk Company furniture	114 00	307	5 83
"	29	" Torlight & Durk rug	7 00	304	35
Feb.	12	" money sent Richard Poole	327 26	290	15 80
"	19	" for labor on house	35 85	283	1 69
"	28	" freight on material for house	3 93	274	1 23
"	28	" for labor on house	23 25	294	
Jan.	23	" Carruth & B., for picture cord, &c	2 50	310	13
Feb.	16	" Hatting S. V. D. Co., moulding	2 05	286	09
"	17	" " " windows, &c	41 83	285	1 99
"	18	" " " moulding	2 50	284	12
"	19	" Fones Bros., guttering	2 52	283	12
		Carried forward	4,451 68		353 91
Feb.	19	To am't bro't forward	4,451 68		353 91
"	26	" Hope Lumber Company, lumber for house.	75 12	276	3 45
Mar.	2	" Hope Lumber Company, lumber for house.	5 06	272	23
"	9	" Mound City P. & — Co., paint	14 00	265	62
"	11	" C. T. Ables & Co., paper	15 36	263	83
"	11	" Hope Lumber Co., lumber	3 90	263	

J. D. Beardsley in Account with the Arkansas and La. Railway—Cont'd.

				Days.	Int. to Dec. 1, '86.
1886.					
Mar. 5	To paid labor on house		24 40	269	1 07
" 26	" Carruth & B., locks, &c		8 20	248	33
" 8	" paid Perkins, work on house		2 65	266	11
" 13	" " labor on house		19 85	261	87
" 19	" " " " "		24 50	255	1 02
" 20	" Purkins, work on house		10 00	254	42
429					
Mar. 26	" " labor on house		21 00	248	
" 26	" " " " "		18 35	248	78
" 29	" Purkins, work on house		10 00	245	41
" 31	" am't paid Furlight & D.		200 00	243	8 10
April 19	" paid labor on house		4 45	224	19
" 23	" " " " "		8 50	220	29
" 30	" " " " "		3 00	213	10
" 8	" Laclede F. B. Co., chimney cope		9 90	235	39
May 10	" J. T. Shirt, lumber for house		94 00	203	3 18
" 7	" paid labor " "		4 10	206	14
" 31	" freight on material for house & tele.		6 05	182	1 82
June 30	" " " coke, voucher 1014		15 23	152	38
July 22	Paid dr'fts, Booker & Wilson, subscription to telephone line.		30 00	130	65
" 27	" H. L. Fox & Co., roofing felt		1 50	125	04
" 31	" W. H. Carruth, treasurer, shortage in money collected for Crosby.		15 00	121	30
" 3	" C. J. Short, lumber for house		12 97	147	31
" 31	" charges on money remitted to Geo. Taylor & Co., to pay Tullis' note.		1 50	90	03
	Total debits		5,110 27	.....	379 97

430 *J. D. Beardsley in Account with the Arkansas and La. Railway.*

				Days.	Int. to Dec. 1, '86.
1881.					
Jan. 1	By 105¼ tons 25-lb. rail at $34		3,692 50		
" 1	" 2 3-*E.* miles fish-plates		300 00		
" 1	" 12,000 spikes at 2c.		240 00		
" 1	" 1 passenger, box, & 4 N. G. cars, 500.00.		4,732 50	2,159	1,715 68
" 1	" 1 standing desk from Cairo		366 00		
1882.					
Feb. 6	By cash from B. & O. R. R.		433 00	1,757	126 79
Apr. 1	" " " " "		200 00	1,704	56 80
1883.					
Jan. 1	" 2 sets lumber sold Weaver		40 00		
	" 1 " " " Short		20 00		
	" 1 " " " Womack		20 00	1,529	24 97
	" 1 lot chain " "		13 00		
	" 1 extra wheel sold Short		5 00		

J. D. Beardsley in Account with the Arkansas and La. Railway—Cont'd.

			Days.	Int. to Dec. 1, '86.
1884.				
Sep. 22	By goods returned to St. Louis Hardware and Cutlery Company included in item of 17.18, charged Sep. 12.	12 03	799	1 59
Oct. 1	" one stave machine sold by Alderman and money taken by him on account.	200 00	791	26 39
Nov. 10	" proceeds of car of old iron from West Va. sold St. Louis Bolt & I. Co. and credited by them on account. Item includes interest from July 1st, 1880, date of delivery to B. & I. Co., to Nov. 10th, 1884, date of settlement of account with St. Louis Bolt and I. Co.	237 47	750	29 79
1885.				
Sep. 30	" lounge for office	10 00	426	71
1886.				
February 10	" furniture for hotel:			
	2 office chairs 4 00			
	1 sideboard 45 00			
	1 parlor mirror 40 00			
	1 walnut table 5 00			
	1 center table 5 00			
	4 hair-cloth chairs 8 00			
		107 00	292	5 20
	Carried forward	6,066 00		1,987 90
431	By amount bro't forward	6,066 00		1,987 90
1880.				
Dec. 18	By Thos. H. Simms, donation note	350 00		
	" W. P. Hart, donation note 337 50		2,173	253 57
	" balance on same 12 50			
		350 00		
21	" A. B. Williams, donation note	250 00	2,162	90 08
31	" E. D. Jett, " "	125 00	2,160	45 00
1881.				
Jan. 4	" A. H. Carriganus, " "	125 00	2,156	44 91
" 5	" W. H. Carruth, " "	500 00	2,155	179 58
" 12	" cash of C. M. Conway	62 50	2,142	57 83
	" H. B. Holman	100 00	2,142	
" 13	" T. " Carriganus, donation note	75 00	2,141	116 35
" 13	" John Justus, " "	350 00		
" 15	" cash of R. C. Phillips	225 00	2,139	80 21
" 22	" J. R. May's donation note	25 00	2,132	53 80
	" R. B. Williams, " "	125 00		
Feb. 4	" W. N. Johnson, " "	25 00	2,119	8 82
" 5	" W. J. Furguson, " "	100 00	2,118	35 30
" 18	" Henry Lazahus, " "	125 00	2,105	61 39
	" C. Jagarsfield, " "	50 00	2,105	
" 19	" S. E. Benson's " "	25 00	2,104	8 76
" 21	" A. J. Hawthorne, " "	25 00	2,102	8 76
March 22	" J. J. Thomas, " "	112 50	2,073	39 04
" 26	" W. D. Green, " "	100 00	2,069	34 48

J. D. Beardsley in Account with the Arkansas and La. Railway—Cont'd.

				Days.	Int. to Dec. 1, '86.
1881.					
April 22	By J. K. Jones, donation note	112 50			
	" J. D. Conway, " "	68 75	2,042		104 14
	" J. W. Williams, " "	125 00			
Dec. 23	" Ode Stuart, " "	200 00	1,802		60 07
1882.					
January 16	" J. K. Jones, " "	50 00	1,778		14 81
" 17	" W. H. Carruth, " "	500 00	1,777		251 56
	" Thos. H. Simms, " "	350 00	1,777		
432					
March 2	By J. K. Jones, donation notes	35 50	1,733		10 97
" 4	" A. J. Hawthorne's " "	25 00	1,731		7 21
" 11	" W. N. Johnson, " "	25 00	1,724		7 18
" 22	" H. J. Tribble, " "	25 00	1,713		7 47
1883.					
Jan. 3	" W. P. Hart, " "	378 00	1,426		89 83
4	" C. M. Conway, " "	62 50	1,425		14 72
	Carried forward	11,250 25			3,673 48
	By amount bro't forward	11,250 25			3,673 48
Jan. 6	" A. H. Carriganus, donation note	132 65	1,423		31 54
" 9	" E. D. Jett, " "	131 25	1,420		31 00
" 16	" T. C. Smith, " "	110 00	1,413		26 90
" 17	" Gray and Steve Carriganus, donation note.	132 85	1,412		31 29
" 18	" H. B. Holman, donation note	110 00	1,411		25 87
" 19	" W. Rowton, " "	61 90	1,410		14 57
Feb. 3	" C. Jagersfield, " "	55 00	1,395		12 78
Mar. 8	" Geo. J. Smith, " "	54 75	1,362		12 48
" 14	" W. D. Green, " "	100 00	1,356		22 60
27	" J. R. May's " "	28 00	1,343		6 26
April 29	" John Justus, " "	361 10	1,320		79 42
" 27	" W. J. Furguson, " "	50 00	1,312		10 93
May 7	" balance on do.	50 00	1,302		10 85
1882.					
Jan. 13	" J. K. Jones, donation note	50 00	1,781		14 84
1884.					
March 18	" Carrigan & Bros., " "	141 60	987		23 19
June 28	" H. Wright, " "	104 95	885		15 48
May 15	" A. N. Carriganus, " "	20 00	929		3 09
1885.					
Oct. 8	" A. Lazarus, " "	174 63	418		22 71
	" H. Wright, " "	151 15			
1886.					
Feb. 28	" J. J. Thomas, " "	158 55	275		7 22
	Total credits	13,428 63			4,076 52

(Endorsed:) Filed Dec. 24th, 1886. Ralph L. Goodrich, clerk.

433 And on January 21st, 1887, as follows:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.* } 811.

Comes the defendant, by J. M. Moore, Esq., his solicitor, and files herein his exceptions to report of master.

Which exceptions are as follows:

United States Circuit Court for the Eastern District of Arkansas.
In Chancery.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.*

The defendant, John D. Beardsley, excepts to the report of Thomas H. Simms, special master in said cause, for the following causes, viz:

First. Because the master refused to consider the depositions of W. H. Carruth, H. H. Wheless, and this defendant.

Second. Because the master did not charge the plaintiff with five hundred and eighty-seven dollars and seventy-six cents received by him in excess of his salary, as shown by the account made Exhibit B to the deposition of John D. Beardsley, and with interest on said sum.

Third. Because the master charged defendant with fifteen hundred and seven dollars and seventy-five cents and one hundred and sixty-eight dollars and nine cents interest thereon on account of a credit taken by defendant for the proceeds of the sale of "old material."

434 Fourth. Because the master charged defendant with the sum of fourteen hundred and ninety-nine dollars and ninety-nine cents and interest thereon on account of payments made by defendant to Vinton Alderman.

Fifth. Because the master refused to allow defendant the following credits appearing upon his accounts, viz:

Jan'y 1.	By 105½ tons 25-pound rails at $35		3,692 50
"	2⅜ miles fish-plates		300 00
"	12,000 pounds spikes at 2 cents		240 00
"	1 passenger, box, and 4 N. G. cars		500 00
1882.			
Feb. 6.	By standing desk from Cairo		36 00
1883.			
Jan. 1.	By two sets of lumber trucks sold	Weaver	40 00
" " "	1 " " " " "	Short	20 00
" " "	1 " " " " "	Womack	20 00
" " "	1 lot chains	" "	13 00
" " "	1 extra wheel	" Short	5 00

1884.			
Sep. 22.	Goods returned to St. Louis Hardware and Cutlery Company included in item of 17.18 charged Sept. 12th		12 03
Nov. 10.	By proceeds of car of old iron from W. Va. sold to St. Louis Bolt and I. Company and credited by them on account. Item includes interest from July 1st, 1880, date of delivery to B. & I. Co., to Nov. 10, '84, date of settlement of account with St. Louis B. & I. Co.		237 47
1885.			
Sept. 10.	By lounge for office		10 00
1886.	By furniture for hotel:		
	2 office chairs		4 00
	1 sideboard		45 00
435	1 parlor mirror		40 00
	1 walnut table		5 00
	1 center table		5 00
	4 hair-cloth chairs		8 00

And also the proceeds of the donation notes set out in said account and amounting in the aggregate, exclusive of interest, to the sum of $7,362.63.

A. B. & R. B. WILLIAMS,
J. D. CONWAY, AND
J. M. MOORE,
For J. D. Beardsley.

(Endorsed:) Filed Jan. 21st., 1887. Ralph L. Goodrich, clerk.

And on January 22nd, 1887, as follows:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.*

Comes the defendant, The Arkansas and Louisiana Railway Company, by J. M. Moore, Esq., its solicitor, and files its exceptions to master's report.

Which exceptions are as follows:

In the United States Circuit Court for the Eastern District of Arkansas. In Chancery.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.*

436 The Arkansas and Louisiana Railway Company except to the report of the special master, Thomas H. Simms, in this, that it allows the plaintiff credit for moneys received by the defendant, John D. Beardsley, from earnings of this defendant by

overdrafts and otherwise, when in fact said defendant was indebted to this defendant on account of said moneys and not to the plaintiff as a stockholder in defendant company.

WILLIAMS AND CONWAY AND J. M. MOORE,
For Ark. and Louisiana Railway Company.

(Endorsed:) Filed Jan. 22nd, 1887. Ralph L. Goodrich, clerk.

And on February 5th, 1887, as follows:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.* } 811.

Comes the complainant, by Jones and Martin, Esqs., his solicitors, and files herein his motion to strike certain depositions from the files of this cause.

Which motion is as follows:

In the United States Circuit Court for the Eastern District of Arkansas.

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.* } Motion to Strike from the Files Certain Depositions.

The plaintiff states that under the orders of this court referring the account between the complainant and the defendant, John D. Beardsley, to a special master the said master had no authority
437 to take any testimony upon any matter save the rate of interest which the contract between the said defendant and Vinton Alderman for the sale of the stock sold by said Alderman to said Beardsley bore and the time for which it was to bear interest; and this complainant was informed by said master that he would not receive or consider any testimony about any other matter relative to said account, and on account thereof this complainant was induced not to attend and cross-examine the witnesses, W. H. Carruth, H. H. Wheless, and John D. Beardsley, whose depositions, taken on Dec. 2nd, 1886, before John Arnold, a notary public, are filed with said master's report herein and referred to in said report.

Wherefore he asks that said depositions be taken out of said report and stricken from the files of this cause.

JONES & MARTIN,
Solicitors for Complainant.

(Endorsed:) Filed February 5th, 1887. Ralph L. Goodrich, clerk.

And on February 8th, 1887, as follows:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.* }

Comes the complainant, by Mess. Jones & Martin, his solicitors,

and the defendants, by Messrs. Williams, Conway, and Moore, their solicitors; and the complainant, by leave of the court first had and obtained, herein files his exceptions to the report of Hon. Thomas H. Simms, the special master appointed herein, and also files his motion to strike from the files the depositions of W. H. Carruth, H. H. Wheless, and John D. Beardsley, attached to said master's report.

438 Which exceptions are as follows:

In the United States Circuit Court, Eastern District of Arkansas.

PAUL F. BEARDSLEY, Complainant, v. JOHN D. BEARDSLEY *et al.*, Defendants. } Affidavit of Complainant's Att'y.

I, Dan. W. Jones, do solemnly swear that I am one of the attorneys for the said complainant, Paul F. Beardsley; that the said complainant is now and has been since the 26th day of December last absent from the State of Arkansas; that he is absent in the city of New York endeavoring to obtain the money necessary to pay to the defendant, John D. Beardsley, the amount of his indebtedness on account of his purchase of one-third interest in the defendant railway company; that I left him in said city, where I had gone with him to assist in his negotiations for the purpose aforesaid, in the month of January last, with the understanding that he would be here in time to prepare and file his exceptions to the master's report herein; that I deemed it necessary, important, and essential to have him present in preparing such exceptions, he being more familiar with the accounts and transactions pertaining to said account than either of his attorneys, but that, receiving a letter from him a few days since stating that his negotiations were still pending and could not be concluded in time to be here before next week, the exceptions were prepared without his presence in the best manner his attorneys could so as to be able to file them in this court on its first rule day after the filing of said master's report save the rule day occurring within a few days after such report was filed.

DAN. W. JONES.

Sworn to before me this 5th day of February, 1887.

RALPH W. GOODRICH,
Clerk U. S. Circuit Court.

439 In the United States Circuit Court for the Eastern District of Arkansas.

PAUL F. BEARDSLEY v. JOHN D. BEARDSLEY *et al.*

The complainant, Paul F. Beardsley, excepts to the report of Thomas H. Simms, special master in said cause, for the following causes, viz:

First. Because the master charges the complainant with the sum of $3,278.22 for interest upon the complainant's purchase of his one-third of the Washington and Hope railway, being interest at the rate of eight per cent. per annum from the time of John D. Beardsley's purchase from Vinton Alderman.

Second. Because he credits plaintiff with only $1,500.75 and interest thereon of $168.09 given plaintiff on account of old material sold by defendant, John D. Beardsley, said old-material account being stated by the master at $4,502.27, when in fact it was, as shown by the evidence in the cause, to be $4,967.50 after deducting said defendant's checks received from the Baltimore and Ohio Railway Company, one-third of which should be credited to the plaintiff.

Third. Because the master refused to credit plaintiff with one-third of $200.00 paid Alderman by the sale of a stave machine, said John D. Beardsley having been credited on the books of the company, the defendant railway, with said sum on said account.

Fourth. Because the master refused to credit the plaintiff with one-third of the $500.00 paid to Alderman by the defendant railway company in 1886.

Fifth. Because the master refused to credit the plaintiff with one-third of $915.92 realized from the purchase of cotton seed for the Little Rock Oil and Compress Company in the season of 1885–'86.

JONES & MARTIN.

(Endorsed:) Filed February 8th, 1887. Ralph L. Goodrich, clerk.

440 And on February 24th, 1887, as follows:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY *et al.* } 811.

This day comes the complainant, by Jones & Martin, Esqs., his solicitors, and the defendants, by J. M. Moore, Esq., their solicitor, and the motion of complainant to strike from the files the depositions returned by the master with his report in said cause, as also the exceptions of the complainant and of the defendant, respectively, to said report, are submitted to the court, and the court doth overrule complainant's motion to strike said deposition from the files, and it doth likewise overrule the several exceptions filed by the complainant and the defendants to the report of the special master and approve and confirm said report.

It is therefore by the court ordered, adjudged, and decreed that the complainant pay unto the defendant, John D. Beardsley, or into the registry for him, the sum of seven thousand seven hundred and fifty-six dollars and twenty-nine cents ($7,756.29), within thirty days from the date of this decree, with interest thereon at the rate of eight per cent. per annum from the 24th day of December, 1886, until paid; and upon the payment of said sums that the defendant, John D. Beardsley, convey and deliver unto the complainant or to his successors of record or into the registry of the court one-third of the

full-paid stock of the Arkansas and Louisiana Railway Company (less one-third of eight shares issued to the directors) which has been issued or ought to have been issued to the said defendant, John D. Beardsley, on any account whatsoever, and which one-third so to be delivered and conveyed amounts to seventeen hundred and four shares of the face value of one hundred dollars each, and that at the same time said defendant deliver and convey to the complainant or to his solicitors of record or into the registry of the court one-third of the one hundred and forty-four first-mortgage bonds which
441 have been earned under the construction contract between said defendant and said railway company, but not certified nor held as collateral security; and as soon as he shall have received from the St. Louis, Iron Mountain and Southern Railway Company the two hundred and forty first-mortgage bonds of the defendant railway company now held as collateral security, or as soon as the debt due the St. Louis, Iron Mountain and Southern Railway Company shall have been paid, that he deliver to complainant one-third of said bonds; and it is further ordered, adjudged, and decreed that the defendant, John D. Beardsley, has a lien on the one-third interest sold by him to the complainant in the stock and bonds of the Arkansas and Louisiana Railway Company for the payment of the sum of money herein adjudged to be due him from the complainant; and if the complainant shall fail to pay said sum within the time aforesaid it is ordered that Charles P. Redmond, as the master of this court, after having advertised the same for ten days by two publications in a daily newspaper published at the city of Little Rock, proceed to offer the aforesaid interest of the complainant in the said stock and bonds—it being the same hereinafter described—for sale to the highest bidder for cash in hand at the front door of the building in which this court is held; and upon the payment by the purchaser of the amount bid by him that he execute and deliver to such purchaser a certificate of sale therefor, and that he forthwith report his proceedings to this court for such further order therein as may be necessary.

It is further ordered that the defendant, John D. Beardsley, have such of said stock as is in his possession and control present at said sale and deliver the same to the master to be delivered to the purchaser, and for that purpose that the defendant railway issue and deliver to the said John D. such of said stock as has not been issued; and it is further ordered and decreed that the defendant, John D. Beardsley, pay all the costs of this proceeding except the cost of the aforesaid sale and the orders of the court in pursuance
442 thereof, which shall be paid by the complainant, and that the sum of one hundred and fifty dollars be allowed to the special master, Thomas H. Simms, for his services.

And that the court retain control of this cause for any further orders that may be necessary.

(Signed) J. M. MOORE.
JONES & MARTIN.

And on April 6th, 1887, as follows:

PAUL F. BEARDSLEY
v.
JOHN D. BEARDSLEY and ARKANSAS AND LOUISIANA R. R.

Now, on this day, comes the defendant, John D. Beardsley, by J. M. Moore, Esq., his solicitor, and prays an appeal to the Supreme Court of the United States from the final decree rendered in this cause on the 24th day of February, 1887, which prayer for appeal is allowed. The foregoing prayer for appeal was made and allowed on the 30th day of March, 1887, and is entered now for then and as of that date.

Which supersedeas bond is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas, in Chancery Sitting.

PAUL F. BEARDSLEY, Plff's,
v.
JOHN D. BEARDSLEY *et al.*, Def'ts.

443 Know all men by these presents that we, John D. Beardsley, as principal, and John J. Thomas, Henry B. Holman, Henry B. Ware, William H. Carruth, and Robert B. Williams, of Washington, Arkansas; William C. Sypert, John P. Cowling, and William K. Clowling, of Nashville, Arkansas, and Thomas H. Simms, of Little Rock, Arkansas, are held and firmly bound unto Paul F. Beardsley in the sum of thirty thousand dollars; to which payment, well and truly to be made, we bind ourselves and each one of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this the 6th day of April, in the year 1887.

Whereas the above-named John D. Beardsley hath prosecuted an appeal in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the eastern district of Arkansas, in chancery:

Now, therefore, the condition of this obligation is such that if the above-named John D. Beardsley shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN D. BEARDSLEY. [SEAL.]
JOHN J. THOMAS. [SEAL.]
HENRY B. HOLMAN. [SEAL.]
JOHN C. WARE. [SEAL.]
WILLIAM H. CARRUTH. [SEAL.]
ROBERT B. WILLIAMS. [SEAL.]
WILLIAM C. SYPERT. [SEAL.]
JOHN P. COWLING. [SEAL.]
WILLIAM K. COWLING. [SEAL.]
THOMAS H. SIMMS. [SEAL.]

444 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Personally appeared before me John J. Thomas, who, being duly sworn, says that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

JOHN J. CHAMBERS.

Sworn to and subscribed before me this 6th day of April, 1887.

R. B. WILLIAMS,
U. S Commissioner, E. D. Ark.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Personally appeared before me Henry B. Holman, who, being duly sworn, says that he is worth the sum of five thousand dollars over and above all his just debts and liabilities.

HENRY B. HOLMAN.

Sworn to and subscribed before me this 6th day of April, 1887.

R. B. WILLIAMS,
U. S. Commissioner, E. D. Arkansas.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Personally appeared before me John C. Ware, who, being duly sworn, says that he is worth the sum of five thousand dollars over and above all his just debts and liabilities.

JOHN C. WARE.

Sworn to and subscribed before me this 6th day of April, 1887.

R. B. WILLIAMS,
U. S. Commissioner, E. D. Ark.

445 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Personally appeared before me William H. Carruth, who, being duly sworn, says that he is worth the sum of three thousand dollars over and above all his just debts and liabilities.

WILLIAM H. CARRUTH.

Sworn to and subscribed before me this 6th day of April, 1887.

R. B. WILLIAMS,
U. S. Commissioner, E. D. Ark.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Personally appeared before me William C. Sypert, who, being duly sworn, says that he is worth the sum of three thousand dollars over and above all of his just debts and liabilities.

WILLIAM C. SYPERT.

Sworn to and subscribed before me this 6th day of April, 1887.
R. B. WILLIAMS,
U. S. Commissioner, E. D. Ark.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Personally appeared before me John P. Cowling, who, being duly sworn, says that he is worth the sum of twenty-five hundred dollars over and above all of his just debts and liabilities.
JOHN P. COWLING.

Sworn to and subscribed before me this 6th day of April, 1887.
R. B. WILLIAMS,
U. S. Commissioner, E. D. Ark.

446 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Personally appeared before me William K. Cowling, who, being duly sworn, says that he is worth the sum of twenty-five hundred dollars over and above all of his just debts and liabilities.
WILLIAM K. COWLING.

Sworn to and subscribed before me this 6th day of April, 1887.
R. B. WILLIAMS,
U. S. Commissioner, E. D. Ark.

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

Personally appeared before me Thomas H. Simms, who, being duly sworn, says that he is worth the sum of three thousand dollars over and above all his just debts and liabilities.
THOMAS H. SIMMS.

Sworn to and subscribed before me this 6th day of April, 1887.
RALPH L. GOODRICH,
U. S. Commissioner, E. D. Ark.

STATE OF ARKANSAS, *Hempstead County:*

Personally appeared before me Robert B. Williams, who, being duly sworn, says that he is worth the sum of five thousand dollars over and above all of his just debts and liabilities.
ROBERT B. WILLIAMS.

Subscribed and sworn to before me this 6th day of April, 1887.
[SEAL.] JOHN E. WILLIAMS,
Notary Public.

(Endorsed:) This bond taken and approved and ordered to operate as a supersedeas this 9th day of April, 1887. Henry C. Caldwell, district judge. Filed April 9th, 1887. Ralph L. Goodrich, clerk.

447 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the originals remaining of record in my office.

The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.

In witness whereof I have hereunto set my hand and the seal of said court this ninth (9th) day of September, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the one hundred and twelfth.

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 417. John D. Beardsley, appellant, *vs.* Paul F. Beardsley. Filed September 27, 1887.

Office Supreme Court U. S.
FILED,
NOV 10 1890
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 119.

JOHN D. BEARDSLEY, Appellant,

vs.

PAUL F. BEARDSLEY, Appellee.

Appeal from the United States Circuit Court for the Eastern District of Arkansas.

BRIEF FOR APPELLANT.

JOHN M. MOORE,
A. H. GARLAND,
H. J. MAY,
For Appellant.

McGILL & WALLACE
PRINTERS,
1107 E STREET N. W.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 119.

JOHN D. BEARDSLEY, APPELLANT,

vs.

PAUL F. BEARDSLEY, APPELLEE.

Appeal from the United States Circuit Court for the Eastern District of Arkansas.

BRIEF FOR APPELLANT.

Paul F. Beardsley, the appellee, filed a bill in this cause for the purpose of enforcing the performance by the appellant of a contract in writing made and delivered by appellant to the appellee on the day of its date, which is as follows:

WASHINGTON, ARK., *January* 1, 1882.

Memorandum.

I hold of the stock of the Washington and Hope Railway Company thirty-three thousand two hundred and fifty dollars, in thirteen hundred and fifty shares, which is sold to Paul F. Beardsley, and which, though standing in my name, belongs to him, subject to a payment of eight thousand dollars, with interest at same rate and

from same date as interest on my purchase of Mr. Alderman's stock.

J. D. BEARDSLEY.

Rec., 6.

At the time this paper was executed the Washington and Hope Railway was completed and in operation. It was a short line, ten miles in length, and extended from Washington, in Hempstead County, to Hope Station, on the St. Louis, Iron Mountain and Southern Railway. The company was incorporated in 1877 for the purpose of building a road between these points. On the 10th of September, 1879, the company having graded a road-bed for a narrow-gauge road, entered into the following contract with the appellant for the completion of the road:

"The Washington and Hope Railway Company, having constructed a road-bed for a narrow-gauge railway from Washington to Hope, in said county of Hempstead and State of Arkansas, and being desirous of having the same completed and operated, to that end hereby agree and contract with J. D. Beardsley, party of the second part, to procure and hold in trust for him, the said Beardsley, and for such persons as he may associate with him, all of the stock in said Washington and Hope Railway Company held and owned by any person whomsoever, which said stock shall be held by the board of directors of said Washington and Hope Railway Company in trust for the use and benefit of said J. D. Beardsley and his associates until he shall have completed said Washington and Hope Railway and made the same a first-class narrow-gauge railroad, when said stock shall vest absolutely in and become the property of said J. D. Beardsley and his associates or their assigns.

"In the meantime, under the conditions hereinafter expressed, and until the forfeiture made by said J. D. Beardsley and others, according to the conditions hereinafter recited, said trustees shall collect and turn over to said J. D. Beardsley and his associates all of the dividends, issues, and profits upon said stock arising from the operations of said road:

"*Provided*, That in the transfer of said stock a sufficient quantity of stock shall be retained by at least four members of the present board of directors of said Washington and Hope Railway Company to qualify them to hold the position of directors *in* said company; *and provided further*, That any of the stockholders may retain their stock by promptly paying up the remainder of said stock.

"And it is further agreed that said party of the first part shall procure personal obligations of citizens who, in the opinion of the board of directors, are solvent, obligating themselves to pay to said J. D. Beardsley the aggregate sum of ten thousand dollars ($10,000), one-half of which sum shall be due and payable ten days after said railway shall have been completed, ironed, and accepted by the board of directors as a first-class narrow-gauge railway, which completion shall not be beyond four years from the date hereof, and the other half shall be due and payable one year thereafter.

"The said J. D. Beardsley agrees and contracts, for himself and his associates and their heirs and assigns, that he or they will at once proceed to put upon the roadbed of said Washington and Hope Railway ties suitable for a first-class narrow-gauge railway, said ties to be of either white or post-oak timber, and not less than — feet long, and not less than — inches in width, and not less than — inches in thickness, and to be laid not more than — inches from centre to centre of said ties on an average, and that he or they will put wooden rails upon the same and securely spike them to said ties, and will use all possible diligence in getting said road ready for the transportation of freight and passengers.

"He also undertakes and obligates himself and others as aforesaid to provide said road with sufficient rolling stock to transfer promptly all freight and passengers offering for transportation, and he guarantees prompt transportation of freight and the transportation of passengers within one hour from Washington to Hope or from Hope to Washington, inclusive of necessary stoppages, and he further obligates himself to run at least one passenger car daily each way in close connection with the passenger trains on the St. Louis, Iron Mountain and Southern Railway.

"Said J. D. Beardsley further obligates himself as

aforesaid to construct proper crossings, according to law, at all points where public roads shall cross the line of said Washington and Hope Railway, and to build a depot building at Washington sufficient for the storage and safe keeping of all freight committed to the care of said road; and, further, that said J. D. Beardsley and his associates shall be answerable and responsible to all persons who may sustain damage from any cause whatever arising out of the operation and running of said railway, whether operated by steam or otherwise.

"It is, however, distinctly understood and agreed by and between the parties hereto that the putting down of wooden rails is a temporary arrangement, and that said wooden rails shall be replaced with iron rails of not less than twenty pounds weight per yard, and that said J. D. Beardsley hereby covenants and agrees to replace said wooden rails as rapidly with iron rails as aforesaid.

"It is believed that this may be done in two years from the date of this contract, but if the said party of the second part should find it impracticable to iron the whole of said road within two years the party of the first part agrees that if one-third of the same is laid with iron rails within two years from the date of this contract that then, at the end of said two years, the said party of the first part will grant an extension of one year to said J. D. Beardsley, and if at the expiration of three years two-thirds of said road shall be laid with iron as aforesaid the party of the first part shall grant the party of the second part another extension of time for one year, in which time said road shall be completed with iron as aforesaid, with all necessary switches, turn-tables, depots, &c., and shall be equipped with one good six-ton locomotive and cars necessary to transport all freight offering for transportation with promptness, and also at least one good passenger coach for the transportation of passengers, and that at least one passenger train shall be run each way each day in close connection with the passenger trains on the St. Louis, Iron Mountain and Southern Railway. It is also distinctly understood and agreed between the parties hereto that if, at the expiration of two years from the date of this contract, said J. D. Beardsley and others shall have failed to iron one-third of said road as above provided, then and in that event it shall be at

the option of said party of the first part to declare this contract at an end and without further notice to take immediate possession of said road and equipments, and by said forfeiture all the property and estate which said J. D. Beardsley and others may have acquired in said road by virtue of this contract shall revest in and become the absolute property of said company as originally organized; and if, at the end of three years from this date, two-thirds of said road shall not have been ironed as hereinbefore provided, then it shall be at the option of the party of the first part to declare this contract at an end, and all the rights and property of said J. D. Beardsley and others shall vest absolutely in and become the property of said party of the first part as originally organized, and they may take possession of the same without notice to said Beardsley and his associates; and if at the end of four years from the date hereof the said party of the second part shall not have completed the entire length of said road, with iron rails, switches, turn-tables, depots, rolling stock, and other equipments, as hereinbefore provided, as a first-class narrow-guage railway, it shall be at the option of the party of the first part to declare this contract at an end, and they may without further notice take possession of said railway, and all the property, rights, and estate which said party of the second part may have acquired by virtue of this contract shall vest in and become the absolute estate of the party of the first part as originally organized: *Provided, however*, and it is hereby distinctly understood and agreed, that said party of the second part shall have the right forthwith and shall remove the iron rails, spikes, and locomotive, if there be one, from said railway; but should the said party of the first part desire to purchase said iron and locomotive they shall have the right to take the same at the then market value of such iron and spikes and the freight thereon, and for the locomotive, if there be one, at the maker's price at the time, less a fair allowance for use and wear, and if said prices cannot be agreed upon they shall be ascertained by arbitration.

"And the party of the second part further covenants and agrees that in the event of his failure to put down the rails as fast as hereinbefore provided, he will not attempt to prevent or obstruct the parties of the first part

in taking possession of the road and rolling stock, and that he will not construe the title to the iron and locomotive to justify him in holding the road or delaying the delivery thereof; but that if the parties of the first part should not wish to purchase said iron, spikes, and locomotive, then that he will remove said iron and locomotive, if there be one, within one week after receiving notice so to do, leaving the road-bed and ties and wooden rails and all other rolling stock still upon said road and in good condition."

Appellant associated one Vinton Alderman, who resided in Ohio, with him in the contract, under a verbal agreement that they would contribute equally to the expense of constructing the road, and would divide the stock of the company between them equally.

Deposition of Vinton Alderman, Rec., 259.
Deposition of John D. Beardsley, Rec., 103.

The road was completed by the appellant, in compliance with the terms of the contract, on the 1st of January, 1881, and was accepted by the company as of that date. (Exhibit F, page 62.) One hundred thousand dollars of the paid-up capital stock, except a few shares reserved by the directors to qualify them to serve on the board, was issued by the company to the appellant in payment for such work.

The appellee came to Washington, Arkansas, and was employed to work on the road at a salary of $75 per month, about the 4th or 5th of November, 1881. Prior to this time Vinton Alderman had concluded to dispose of his stock, and had offered to sell it to the appellant for $12,000. On the 10th of November, 1881, the appellant received a letter from J. W. Paramore, President of the Texas and St. Louis Railway Company, advising him that he was considering a proposition to purchase Alderman's stock and asking for information in regard to the road. Appellant, fearing that complications might arise

with the St. Louis, Iron Mountain and Southern Railway Company if Paramore should acquire Alderman's stock, immediately determined to purchase it himself, and on the same day wrote to Alderman offering to buy the stock for $12,000 dollars on a credit. Alderman replied without delay accepting his proposition. In December following appellant agreed, at the request of appellee, that he would sell him about two-thirds, being $33,250, face value, of the Alderman stock, for $8,000 upon an understanding that the stock was not to be delivered until it should be paid for, and that the purchase-money should bear interest from the same date and at the same rate that appellant was paying on his purchase from Alderman, and on the next day appellant delivered to appellee the memorandum copied above.

Appellee continued in the employment of the Washington and Hope Railway and of appellant as lessee under the construction contract hereafter referred to until February, 1886, a period of a little over four years from the delivery of said memorandum. He never made any payment on the stock, nor was the subject of the sale ever mentioned between the appellee and appellent from the time the memorandum was delivered until about the 1st of February, 1886. In the summer or fall of 1882 it was determined to extend the Washington and Hope Railway so as to form a continuous line of railroad from the Indian Territory on the western border of Arkansas to the Louisiana line on the southern border, and for that purpose two companies were incorporated on the 13th of September, 1882, by the stockholders of the Washington and Hope Railway Company. One of these, the Arkansas and Louisiana Railway, extended from Hope in a southeasterly direction to the line between the States of Arkansas and Louisiana. The other, the Arkansas and Indian Territory Railway, extended from Washington in a northwesterly direction to the line of the Indian

Territory. For the charters of these two companies see Exhibits D and E, Record, pp. 24 and 26.

About $62,000 of stock was subscribed in each of these companies, but none of these subscriptions were ever paid except what was paid by the appellant; and no stock was ever issued on the subscriptions.

Deposition of J. D. Beardsley, Rec., 137.
" " R. B. Williams, " 229.

On the 18th day of September, 1882, the Washington & Hope Railway Company sold its property, rights and franchises to the Arkansas & Indian Territory Railway Company. The following is a copy of the material parts of the contract:

" *Whereas* the party of the first part is authorized by the laws of this State to sell and the party of the second part to purchase and operate the line of railroad owned by the party of the first part, and it is believed a sale will be beneficial to the stockholders of each corporation and to the public: *Now, therefore*, this agreement witnesseth that the party of the first part, in consideration of the issue to it by the party of the second part of one hundred thousand dollars of its paid-up capital stock and of the agreements of the party of the second part hereinafter contained, have granted, bargained, and sold, and doth by these presents grant, bargain, sell, assign, transfer, and convey unto the party of the second part, and to its successors and assigns, all and singular its railroad, including its rights of way, road-bed and tracks, switches and side tracks, turn-tables, water-tanks, depot buildings, freight-houses, engines, tenders, cars, trucks, and all rolling-stock of every kind, and all material of every description on hand for the purpose of operating, repairing, or running said railroad, all the lands donated by the State of Arkansas to the party of the first part by an act of the General Assembly entitled, 'An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company,' approved March 5, 1879, and more particularly described in a certain deed of conveyance executed by Thomas J. Churchill, Governor of the

State of Arkansas, on the 30th day of January, A. D. 1882, and which is duly recorded on pages 494 and 495, in vol. No. 13, of the record of Deeds and Mortgages, in the office of the circuit clerk and *ex officio* recorder of Hempstead county; and also such lands as may hereafter be conveyed to the party of the first part by the Governor of the State of Arkansas under said act of the General Assembly aforesaid, together with all other personal property and all real estate owned by the party of the first part and situated in Hempstead county, in the State of Arkansas or elsewhere, and all the rights, privileges, and franchises conferred upon the party of the first part by the general statutes of this State for the incorporation of railroad companies, including the exclusive right to own, operate, and maintain a railroad between the towns of Washington and Hope, in Hempstead county aforesaid; to have and to hold the above-described property, franchises, lands, and appurtenances unto the said party of the second part, and its successors and assigns. And the party of the second part for and in consideration of the aforesaid conveyance hereby agrees that it will pay off and discharge all debts and liabilities of every kind due and owing or to become due by the party of the first part."

At a meeting of the stockholders of the Washington and Hope Railway Company, held on the day the contract of sale was executed, for the purpose of ratifying the same, it was resolved that the stock of the Arkansas and Indian Territory Railway Company be distributed among the stockholders in proportion to the amount of stock by them severally owned in the Washington and Hope Railway Company, and that the organization of said company be dissolved (Rec., 50), and all the stockholders at the same time executed an agreement in writing accepting the aforesaid stock of the Arkansas and Indian Territory Railway Company in lieu of their holdings in the old company (Rec., 52.)

On the 17th day of May, 1883, the Arkansas and Indian Territory Railway Company sold out to the Arkansas and

Louisiana Railway Company upon the same terms and consideration as it had purchased from the Washington and Hope Railway Company. The transfer was in writing, and in substantially the same form as that of the Washington and Hope Railway Company above copied. (See Exhibit C, Rec., 54.)

The stockholders of the Arkansas and Indian Territory Railway Company executed an agreement in writing acknowledging the delivery to them, and signifying their acceptance of, $100,000 of paid-up stock of the Arkansas and Louisiana Railway Company in the place of their holdings in the former company. (Exhibit E, Rec., 57.)

Down to this time no stock had ever been issued or paid for in either of said companies, excepting the $100,000 issued to the appellant (including a few shares to the directors) under the construction contract of 1879, above mentioned, and that issued by the purchasing companies, as above stated, to replace the stock of the Washington and Hope Railway.

Every one connected with the road, including the appellee, had knowledge of these transfers, and assented to them.

See deposition of J. D. Beardsley, Rec., 135.

On the 22d day of May, 1883, a construction contract was entered into between appellant and the Arkansas & Louisiana Railway Company, of which the following is a copy:

"*Whereas* the said J. D. Beardsley, under an agreement with the Arkansas and Indian Territory Railway Company, has changed the gauge of ten miles of road between Hope, on the St. Louis and Iron Mountain Railway, and the town of Washington, to a standard gauge, and relaid the same with 56-pound and 60-pound iron rail, and has replaced most of the narrow-gauge ties with good standard guage ties, which ties, with all the iron rails, fastenings, spikes, &c., he has furnished, and he has

also constructed for the said Arkansas and Indian Territory Railway about three and a half miles of new road-bed between Hope and Washington, and some seven or eight miles of new road-bed northwest of Washington, and has laid, surfaced, and finished about three miles of new road northwest of Washington, using thereon good and sufficient standard-guage ties and an iron rail of 56 pounds or 60 pounds to the yard, which ties, rails, with the spikes and fastenings, &c., the said J. D. Beardsley has furnished; on account of this and other work done, and this and other material furnished, the said Arkansas and Indian Territory Railway Company has delivered to said J. D. Beardsley fifty of its first-mortgage bonds for the sum of one thousand dollars each, and all the balance for all work done and for all material furnished by the said J. D. Beardsley for the said Arkansas and Indian Territory Railway Company is yet due and unpaid;

"*And whereas*, by deed dated May 17, 1883, the Arkansas and Louisiana Railway Company purchased and acquired the said Arkansas and Indian Territory Railway, together with its franchises, rights, privileges, and all its property, real and personal, and it was a condition of the said purchase that the said Arkansas and Louisiana Railway Company should assume and pay all legal debts and liabilities and discharge all obligations of the Arkansas and Indian Territory railway;

"*And whereas* the said Arkansas and Louisiana Railway Company has authorized an issue of its stock to an amount equal to twenty thousand dollars per mile for the entire length of its projected road, from the line of the State of Louisiana to the line of the Indian Territory, and has authorized an issue of bonds to an extent of fifteen thousand dollars per mile for the entire length of its road as aforesaid, which bonds are to bear interest at the rate of five per cent., and are to be secured by first mortgage on the road, road-bed, and all the property and franchises of the company; and the Arkansas and Louisiana Railway Company has authorized and directed its president and secretary to contract for the construction of its said road, paying therefor, if possible, in the stock and bonds aforesaid, all of which will appear by reference to records of the company; *Now, therefore*, this contract is made: The said J. D. Beardsley, for the pay-

ments and considerations hereinafter set forth and expressed, covenants, undertakes, and agrees as follows: He is to replace all the narrow-gauge ties remaining in the road between Hope and Washington with good standard-gauge ties and put the road in good order for business. He also undertakes to proceed at once to grade, build, and complete a section of the road from Washington northwest, a distance of from fifteen to twenty-five miles, to such point as may be designated on the present location or an extension of it. He is to procure at his own cost good ties of white or post oak, to be eight feet long and not less than six inches thick, and to put on the same iron rails not less than 56 pounds to the yard, and equal in quality to the rails now laid upon that portion of the road now under iron.

"He is to furnish spikes, fastenings, and all necessary materials, and lay the road, align and ballast it, and furnish it in good condition for traffic. He is also to grade and construct all necessary sidings, using upon them the same kind of iron and ties, and putting them in as good condition as the main track, and he is to build and finish at each station a good and acceptable depot building, which is to become the property of the company; and, in addition to the before-mentioned undertakings, he agrees to return to the Arkansas and Louisiana Railway Company for cancellation the fifty bonds of the denomination of one thousand dollars each heretofore paid him by the Arkansas and Indian Territory Railway Company on account, and cause to be cancelled the mortgage heretofore made by the Arkansas and Indian Territory Railway Company on its road-bed, road, franchises, &c., to the end that the mortgage to be made by the Arkansas and Louisiana Railway Company may be a first lien upon the entire road and road-bed from the line of the Indian Territory to the line of the State of Louisiana.

"The said J. D. Beardsley further covenants and agrees that he will continue to construct and finish the road which it is proposed to build in the State of Arkansas, under the charter of the Arkansas and Louisiana Railway Company, or under the charter acquired by the purchase of the Arkansas and Indian Territory Railway Company, as fast as the company may desire him to do

so, furnishing the road in good condition for traffic, and putting up at each station good and sufficient depot buildings, and building all necessary buildings, bridges, culverts, and cattle gaps, but it is not intended to include round-houses or machine shops as necessary buildings.

"For the performance of this contract by the said J. D. Beardsley, the Arkansas and Louisiana Railway Company agree to pay him as follows: For the work done in changing the gauge of the road from Hope to Washington, and changing the road-bed and constructing three and one-half miles of new road-bed south-east of Washington, and in full for all material furnished and for all work done for the Arkansas and Indian Territory Railway Company southeast of Washington, including the new depot at Washington and the siding at Washington, and also for the surrender of the fifty bonds of the denomination of one thousand dollars each for cancellation, heretofore paid to him by the Arkansas and Indian Territory Railway Company, he is to have—

"First. All the lands granted by the State of Arkansas to the Washington and Hope Railway Company, or that may hereafter be conveyed under the law for that purpose approved March 5, 1879, entitled 'An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company.'

"Second. He is to have all the light rails, spikes, bolts, and fastenings that were used upon the narrow-gauge road-bed of the Washington and Hope Railway, and also all the rolling-stock and personal property of all kinds acquired by the Arkansas and Indian Territory Railway Company by purchase of the Washington and Hope Railway, and by that company sold to the Arkansas and Louisiana Railway Company, subject, however, to the payment of whatsoever balance may be due the St. Louis Iron and Bolt Company of St. Louis, on account of the purchase of material by the Washington and Hope Railway Company.

"Third. The Arkansas and Louisiana Railway Company shall deliver to the said J. D. Beardsley the sum of one hundred thousand dollars par value of the paid-up capital stock of this company and the further sum of one hundred and fifty thousand dollars of the first mortgage

bonds of this company. All these payments are declared to be now due, and when paid will be in full for the work done between Washington and Hope, including depot, sidings, and the surrender for cancellation of the fifty bonds of one thousand dollars each of the Arkansas and Indian Territory Railway Company, as hereinbefore provided.

"For the construction of the road in the State of Arkansas, which it is agreed he shall construct, he is to receive for every mile of road constructed and finished, including bridges, culverts, cattle gaps, and the necessary sidings, twenty thousand dollars of the paid-up capital stock of the Arkansas and Louisiana Railway Company and fifteen thousand dollars of the first mortgage bonds of the Arkansas and Louisiana Railway Company, being an aggregate in stock and bonds of thirty-five thousand dollars ($35,000) per mile. It is also declared that upon the completion and acceptance of each mile of road in good condition for traffic, as hereinafter provided, the said J. D. Beardsley shall be entitled to demand and the president and secretary shall issue him paid-up certificates for twenty thousand dollars of the stock of the Arkansas and Louisiana Railway Company, and upon the completion of each section of five or more miles and its acceptance, as hereinafter provided, the president and secretary shall issue to him upon his request the sum of seventy-five thousand dollars in the first mortgage bonds of this company, which will be, as above provided, a sum in stock and bonds equal to thirty-five thousand dollars per mile.

"As a further consideration for the performance of his undertaking, hereinbefore set forth, the Arkansas and Louisiana Railway Company covenant and agree that during the term occupied in the construction of this road in the State of Arkansas, not to exceed five years from the signing of this contract, the said J. D. Beardsley shall have the entire, complete, and exclusive right and use and control of the road, road-bed, switches, depots, and all the property of this company, both for the purpose of construction and traffic, and shall be entitled to collect and receive for his own use and benefit all earnings, revenues, and profits arising out of its use and from any and all sources connected with it, and this use is to be free of all rent and charges.

"For the purpose of settling any question or dispute which may arise under this contract between the parties hereto, and to provide for the examination and acceptance of the road as constructed under the contract, it is agreed by both parties hereto that a committee of three persons shall be formed as follows: The president of the Arkansas and Louisiana Railway Company shall appoint two persons and J. D. Beardsley shall name one person. If these persons shall accept the appointment the secretary shall make it of record upon the books of the company, and shall furnish a certified copy of such record to J. D. Beardsley. The decision of this committee or of any two of them upon any question which may arise under this contract shall be final and beyond appeal as to the parties hereto. It shall be the duty of this committee, or any two of them, upon request of either of the parties hereto, to examine the road as constructed in sections of not less than one mile, and, if they find the same in good condition for traffic, they are to accept it, making the acceptance in writing, in duplicate, and signed by at least two of the committee. Each of the parties hereto shall be entitled to a copy of this acceptance, and upon receipt of such acceptance, signed as above, and upon request of J. D. Beardsley, it is made the duty of the president and secretary of the company to issue at once without any delay the paid-up certificates of stock for sections of one mile or more, and the first-mortgage bonds, as heretofore provided, for sections of five miles or more.

"In case of the death, removal, or resignation of a member of the committee, his place may be supplied by the party who appointed him, and the secretary shall make record of the change, as provided in the original appointment, and all the duties and powers of the original members shall devolve upon their successors.

"It is agreed that this contract may be modified, changed, or amended only by the agreement of both parties hereto in writing, under seal, either indorsed hereon or made a supplementary contract.

"It is also understood that this contract is made subject to the approval and ratification of the directory of the Arkansas and Louisiana Railway Company, which approval, if made, is to be of record and a certified copy of such record hereon endorsed by the secretary of the company, properly attested.

"It is also agreed that said J. D. Beardsley may associate with himself other parties under this contract, and may assign to them such interest as he may think proper, and the Arkansas and Louisiana Railway Company, upon proper notice of such assignment and proper evidence that it is made in good faith, will recognize it and consider the party to whom such assignment is made as a principal under it."

Under this contract the road was extended by appellant from Washington to Nashville, in Howard county, a distance of about sixteen miles, and was operated by him as lessee from the date thereof until the date of the rendition of the decree in this cause. The appellant did some work in the fall of 1882 in relaying the track and widening the gauge of the old road between Washington and Hope, and in grading a few miles northwest from Washington in the direction of Nashville. This work was done under an agreement with the Arkansas and Indian Territory Railway Company recited in the construction contract of May 18, 1883. The money and material used in doing said work was obtained by appellant from the St. Louis, Iron Mountain and Southern Railway Company under an arrangement made in July, 1882.

On the 4th of August, 1883, the appellant assigned a half interest in the construction contract to one George C. Smith for the benefit of the St. Louis, Iron Mountain and Southern Railway Company.

"Exhibit H," Rec., 68.
Deposition of J. D. Beardsley, Rec., 146.
Deposition of R. S. Hays, Rec., 253.

Appellee alleged in his bill that after the execution of the memorandum of sale dated January 1, 1882, he and the appellant worked together harmoniously and in full confidence with each other, and succeeded in completing

a first-class narrow-gauge railroad, all iron, in full operation between the towns of Washington and Hope, it being well understood and agreed between them that appellee's interest in all of said property was one-third thereof, and appellant's two-thirds; that the road being in this condition, and owing but a small debt, appellant and appellee, after full consultation and agreement, concluded to change the gauge of the road and make it uniform with the gauge of the said St. Louis, Iron Mountain and Southern Railway, with which it made connection at the town of Hope, and to extend the line of road, provided they could make the necessary arrangements for money to carry out that plan with the St. Louis, Iron Mountain and Southern Railway; that said arrangements were made soon after said memorandum contract was executed and the work of changing the gauge commenced; that soon after this the appellant, acting for himself and appellee, entered into a construction contract with the board of directors of the Arkansas and Louisiana Railway Company, the terms and conditions of which appellee could not set out; that appellee, reposing the utmost confidence in appellant, did not even read said contract, but joined with the other members of the board of directors (if he were at that time a director) in ratifying the same; that in all matters pertaining to said railway and its properties appellant acted for himself and as trustee for appellee without any change in their respective rights or interests.

That about the month of December, 1885, appellant arbitrarily assumed the title of lessee and general manager, and gave appellee the title of master of transportation, having before that time, in the month of December, 1883, arbitrarily fixed his own salary at $200 per month and that of appellee at $100 per month; that appellee protested against this arrangement for the reason that he believed the amounts ought to be reversed so as to give him double the amount which appellant was receiv-

ing, if the salaries were to be proportioned to the amount of labor and skill devoted by each to the work, but that he took no active steps to correct the matter, believing that it would be satisfactorily adjusted between them when the work of constructing the railway to its terminal point should be completed, and because he recognized the fact that the road needed all its money for construction and to meet its liabilities. He further states that after his purchase of stock he and the appellant, having full confidence in the integrity and good faith of each other, kept no books of account as between themselves, but each took from the revenues of the business, from time to time, whatever was necessary for the actual wants of himself and family, and no more; but in January, 1884, they concluded to employ an auditor and keep accurate accounts of all the affairs of the company, which has been done since that time, and is still done. He further charges that the appellant, in all transactions connected with this business was an active agent and trustee, first of the said Alderman and afterwards of the appellee, and that the directors of said corporations, commencing with the Washington and Hope Railway and ending with the defendant railway, recognized the appellant as the owner of all the property of said corporation for himself and as trustee, first for the said Alderman and afterwards for appellee.

Appellee does not pretend to have made any payment on the stock which he claims to have purchased, nor does he offer to pay for the same. He charges the appellant with having converted to his use some of the moneys derived from the sale of property which he claims and which appellant denies belonged to the corporation, and, among other things, prays that an account thereof, and of all the property of the railway company, be taken and ascertained; that he be decreed a tenant in common with appellant in the said railway and all property connected

therewith to the extent of an undivided one-third interest; that appellant be decreed a trustee for appellee in the construction contract, and that the president and secretary be required to issue and deliver to appellee certificates of stock for one-third of all the stock earned under said contract.

The material allegations of the answer of the appellant are as follows, Rec., 37, *et seq.*:

"In the latter part of the year 1879, or early in 1880, respondent completed the laying of the track of the Washington and Hope Railway, the greater part thereof being constructed with wooden rails or stringers. It soon became apparent that the road could not be operated with such material without constant expense and outlay resulting from the rapid wearing out of the wooden rails, and during said year respondent procured iron rails with which he relaid said track. Soon after the relaying and completion of said track as aforesaid the road was formally accepted by the directory.

"At this time the capital stock of said corporation was $45,000, and upon the completion and acceptance by said company of said road as aforesaid the directors caused the same to be valued by a committee by them appointed for that purpose. The same was appraised at $100,000, and thereupon the stock of the company was increased to that sum, and paid-up certificates of said stock were issued to respondent for himself and the said Alderman, save a few shares reserved and issued to members of the directory for the purpose of rendering them eligible as directors. Said road was completed as aforesaid before the complainant came to Washington, and it is not true, as alleged, that he participated in the construction thereof.

"Defendant further represents that the said Alderman had contemplated removing to Hempstead county, in this State, but in the year 1881 he concluded to remain in Ohio, and thereupon became anxious to dispose of his stock in the Washington and Hope Railway Company, and several times wrote to respondent asking him to purchase the same, which he declined to do for the reason that he did not have the means necessary to make the purchase. The road was in debt and the earnings

thereof were at the time very light; but about the — day of ——, 1881, defendant learned that the said Alderman was proposing to sell his stock to the president of the Texas and St. Louis Railway Company, which was a corporation constructing a narrow-guage railroad in this State to be operated in competition with the St. L., I. M. & S. R'y, upon which road the Washington and Hope Company was largely dependent.

"Defendant knew said company and the president thereof could command large capital, and was fearful that if he acquired said stock it would prove prejudicial to respondent's interest. Wherefore and solely in consideration of said information he wrote at once to the said Alderman proposing that he would purchase his stock for $12,000 if he would sell it to him on a credit. His proposition was accepted by the said Alderman, and he thereupon became the purchaser and owner of said stock.

"And the defendant denies that he made said purchase or that he ever at any time had any correspondence with the said Alderman in regard to the purchase of said stock at the request or the solicitation of the complainant, or that he ever at any time prior or subsequent to said purchase had any conversation or consultation, agreement or understanding, with complainant with regard thereto, and if complainant himself had any correspondence with the said Alderman on the subject respondent is not aware of it.

"Further answering, respondent says in the fall of 1881 he received a letter from the complainant, written in California, stating that he was coming east and requesting respondent to meet him in St. Louis. Respondent and complainant had not met for several years, and desiring to meet his brother again, he went to St. Louis at the appointed time and learned from him that he was going to New York City in furtherance of some scheme or enterprise which he then had on hand. Nothing whatever was said or intimated at said meeting in regard to complainant's becoming in any manner connected with said road. Respondent advised him of the difficulties he had been laboring under for the want of more means, and he volunteered to express the belief that he could procure for respondent the money he needed in New

York. Having made fruitless efforts in that direction himself and failed in the accomplishment of his object, respondent very seriously doubted complainant's ability to effect anything, but told him he would be glad if he could do so. After he arrived in New York complainant wrote to respondent for information about the road, the country, &c., which was sent to him; but, as he expected, nothing ever came of it.

"And he denies that the complainant went to New York, as alleged, at his suggestion or solicitation, or that there is any foundation for the allegation in that behalf in said bill other than the facts hereinabove stated.

"Defendant further represents that soon after complainant had gone to New York in the fall of 1881, as hereinbefore alleged, he received a letter from him stating that he had not succeeded in accomplishing anything in New York, referring to his personal interests, and was out of money and requested defendant to give him employment. Respondent answered his letter declining to employ him. Soon thereafter he received another letter from complainant importuning him to employ him and proposing to work for seventy-five dollars per month for the sake of obtaining a support for his family. Respondent did not wish to employ complainant, because the means at his command were extremely limited and he did not need his services, and besides he felt it better for other reasons that he should not do so, but he could not under the circumstances resist his appeal, and he wrote to him to come to Washington at once, which he did, and went to work at the aforesaid salary proposed by himself and rendered efficient service. He continued in said service at said salary until the 1st day of December, 1883, when respondent advanced his salary to $100 per month. It is not true, as alleged, that complainant objected or protested against the amount at which his salary was fixed; on the contrary, he thanked respondent for advancing it as aforesaid.

"Soon after complainant came to Washington, and entered into the service of the defendant as aforesaid, and after he learned that defendant had purchased the stock of Vinton Alderman, and owned the greater part of the stock of the Washington and Hope Railway Company, he began to importune defendant to sell him a part of said

stock, representing that he still had interests in California, from which he expected to realize money with which he could pay for the same. Defendant did not wish to sell him the stock, or believe that he would be able to pay for the same, but finally, upon his urgent solicitations, consented to sell him thirty-three thousand two hundred and fifty dollars of said stock for the sum of eight thousand dollars, and inasmuch as he was paying interest on his purchase of stock from the said Alderman, and was realizing no dividends thereon, he thought it was but just that complainant should pay him interest from the date of said purchase, and so stipulated. It was further agreed that the stock was not to be delivered to complainant until he should have paid therefor. On the day after he had agreed to make said sale, defendant wrote and delivered to complainant the memorandum copied in his bill. Said sale was not made in pursuance of any previous agreement, or under any other circumstances, or with any other understanding than as herein stated. That from that time until some time in the month of January, 1886, when complainant became offended with respondent, the matter of said sale was never mentioned or alluded to between them. Complainant did not, during all said time, pay or offer to pay, a cent on said purchase. And respondent, knowing that he had failed to realize anything from his alleged gold mine, and was without means to pay for the same, supposed he had abandoned it and had himself ceased to think of it.

"That during said period complainant was in the employment of defendant upon a salary, and while it is true that he rendered valuable and efficient service in the construction and operation of said road, it was no more than was rendered by the other employés in their respective stations, and is usually rendered by persons similarly employed on other railroads.

"While it is true that complainant and defendant got along harmoniously during said time, and frequently consulted together as to such matters concerning the work of constructing and operating said road as is usual and necessary for persons engaged in such duties to do, it is not in any manner true that they ever consulted together as persons jointly interested in the property or stock of said company, nor was it ever understood or agreed in

the remotest degree, either by complainant, or this respondent, that complainant's interest in said property was one-third thereof and defendant's interest two-thirds, as alleged in said bill. Respondent never, before the month of February, 1886, when such a claim was for the first time set up by complainant, as hereinbefore stated, heard, or thought of such a state of affairs as that alleged.

"It is not true that respondent consulted with complainant as a joint owner or as one jointly interested in said property as to the policy of extending said road or widening the gauge thereof. In the summer of 1882 respondent ascertained that the St. Louis, Iron Mountain and Southern Railway Company would aid him in extending the road, and it was at once determined to proceed with the extension thereof. This purpose was the subject of frequent conversations and consultations among the directors, by whose action and co-operation the changes that were effected in the organization of the corporation, with the view to such extension, were made. Complainant was not a member of the directory and was not consulted by the respondent or any one else, so far as he knows, as to the policy of the extension. As to the matter of the widening of the gauge of said road it was determined upon by respondent, as he now remembers, during an interview with R. S. Hays, the first vice-president of the St. Louis, Iron Mountain and Southern Railway Company, at St. Louis, in the summer of 1882, and when complainant was at Washington, Arkansas, several hundred miles away.

"Further answering, defendant says it is not true that he, acting for himself and complainant, entered into a construction contract with his co-defendant, and he states the facts in that behalf to be that after the acquisition by the Arkansas and Louisiana Railway of the property and franchises that had formerly belonged to the Washington and Hope Railway Company, and after it had been determined that said road should be extended, the directors looked exclusively to respondent for carrying said purpose into effect, and in order to enable as well as to induce him to do so a construction contract was entered into between respondent and his co-defendant, the Arkansas and Louisiana Railway Company, the terms of which

will presently be fully set forth; that prior to the making of said contract respondent was a director in said company, and knowing that he could not lawfully enter into contract with the company while holding that position he withdrew from the directory, and the complainant, who was then and at the time said contract was entered into a director in said company, well knew and understood the purpose for which respondent withdrew from the directory.

"That on the 22d day of May, 1883, a contract was entered into by and between respondent, acting solely and exclusively for himself, and his co-defendant, by the terms of which he undertook and agreed to change the gauge of said road, to lay the same with a heavy iron rail, to build depots, equip the road with sufficient rolling-stock, and to extend the same, and to assume and pay all debts and liabilities of said company, amounting to near seventy thousand dollars, in consideration of which said company agreed to convey to respondent the lands donated to it by the State, amounting to about twenty thousand acres, to issue to him stock to the amount of $10,000 per mile on that part of the line between Washington and Hope and $20,000 per mile on the residue of the road, said stock to be issued and delivered to respondent as said road was completed and accepted in sections of one mile, and first-mortgage bonds in the sum of $15,000 per mile to be issued and delivered to him as said work progressed and was completed and accepted in sections of five miles, and to lease said road and the revenues and income thereof to respondent for the period of five years. A copy of said contract is herewith filed, marked Exhibit "H."

"As before stated, complainant was, at the time said contract was entered into, a director in said company, some shares of stock having been issued in his name in order to qualify him to act in that capacity, and he was present at the time said contract was entered into, had full knowledge of the terms thereof, and voted upon and in favor of the resolutions adopted by the board authorizing and ratifying the same.

"There has been issued to respondent, under the provisions of said contract, one hundred thousand dollars of the stock of said company and two hundred and forty

thousand dollars of bonds, all of which have been hypothecated to the St. Louis, Iron Mountain and Southern Railway Company, as hereinbefore alleged, and with the money and material so obtained respondent has extended said road to Nashville, in Howard county, Arkansas, has converted the same into the standard gauge and has replaced the iron on said track with a heavier and better quality of iron.

"And respondent alleges that at the time said contract was entered into between him and his co-defendent, and during all the negotiations for means with which to carry on said work, and during the progress of said work there was never in his mind any thought of associating complainant with him in said contract, nor was there ever the slightest intimation on complainant's part that he had or expected to have any interest whatever therein. Complainant well knew that he could not legally, being a director in said company, be a party personally to said contract. He knew that respondent had withdrawn from the directory in order that he might be enabled lawfully to enter into said contract; and he likewise knew that if it had been the intention to associate him with respondent in the contract there had been no obstacle to his withdrawing from the directory as respondent had done and becoming a party thereto.

"Defendant, further answering, alleges that the original construction and the extension of said road and the change in the gauge thereof has been effected by and through his efforts and the negotiations by him set on foot for the purpose of raising the means necessary to accomplish that result. While he has at all times had the full and hearty co-operation of the directors in whatsoever he thought necessary to be done by them, said road has been constructed and equipped by his sole and unaided efforts.

"It is not true that respondent was ever recognized by the directors of the Washington and Hope Railway Company or of his co-defendant as a trustee for the complainant in respect of said property or the construction contract, or that any officer of either of said companies ever heard of the claims advanced by him in that respect or of any claim on his part of an interest of any kind in said property until a very short time prior to the institu-

tion of this proceeding, and respondent does not believe that complainant himself entertained such views until a very short time prior thereto. If he did he never at any time by word or act manifested it; and it is a fact well known to all who know the complainant that he is of an aggressive temper, disposed to have his way in all matters with which he is connected, and ready on all occasions to assert what he deems to be his rights.

"Respondent denies that complainant has or ever had any interest in said property or in the contracts made by respondent with said company, and he is advised that such right as he might have acquired to the stock which respondent agreed as hereinbefore alleged to sell him by paying the price agreed upon between them are stale and barred by lapse of time and the failure of the complainant to perform the condition upon which he was to acquire said stock, and he here pleads the staleness of complainant's claim in bar of the relief sought in said bill."

The Arkansas and Louisiana Railway Company filed its answer (Rec., 35), but as nothing very material to vary the defenses set up by J. D. Beardsley is contained therein, it is not necessary to notice here specifically such answer.

Separate replications were entered to these answers (Rec., 69, 70). Much proof was taken in the cause, the essential portions of which will be referred to in an after part of this brief.

At the hearing, upon the pleadings and proof, the Court below rendered a decree quite commensurate (if not a little more so) with the prayer of the appellee's bill (Rec., 72 *et seq*). But afterwards the Court set aside this decree and referred the cause to a Master to take an account (Rec., 272), which the Master did, and reported the same to the Court; and upon consideration of such report on exceptions thereto by both parties, the Court decreed in favor of appellee fully up to the measure of appellee's prayer, and from that decree John D. Beardsley appealed.

Rec., 298–300.

Assignment of Errors.

The Court below erred in its construction of the contract of January 1, 1882, set forth in the bill of appellee on page six of the record:

In allowing to appellee any of the sums or items of account mentioned and set forth in its final decree in this cause.

The Court below should have decreed against appellee and dismissed his bill of complaint.

ARGUMENT.

First. What is the character and legal effect of the writing relied on by the appellee? Was it an executed contract of sale, or was it an executory agreement to sell upon payment of the amount specified?

Did it, at the time it was delivered to the appellee, impose a mutual obligation binding on both parties?

We submit that the memorandum must be construed as executory. It is true it recites that the stock *is sold* to P. F. Beardsley and *belongs to him*, but these words must be construed in connection with the entire instrument. The true construction is not to be found in any particular provision contained in the instrument, disconnected from all others; but in the ruling intention of the parties gathered from all the language they have used. It is the legal effect of the whole which is to be sought for. The mere form of the instrument is of little account.

Heryford *v.* Davis, ~~112~~ 102 U. S., ~~215~~ 235

The use of the word "sold" in the contract of sale does not necessarily make the contract an executed one. That language must be construed in connection with the rest of the instrument which must be taken as a whole.

Anderson *v.* Read, 106 N. Y., 344.

Let us examine this instrument as a whole; its language is as follows:

"I hold of the stock of the W. & H. Railway Co., $33,250.00, or 1,350 shares which is sold to Paul F. Beardsley, and which though standing in my name belongs to him *subject to a payment of $8,000.00 with interest from the same date, and at the same rate as the purchase of Mr. Alderman's stock.*"

Granting that the language which precedes that part in italics would, standing alone, constitute a completed sale, what is the meaning and effect of the latter clause of the instrument? It was evidently added for a purpose, and that purpose was to restrict and qualify the meaning of the language used in the first part of the agreement. It is presumed these words were used for the same purpose, and the Court cannot read them out of the contract no more than it can nullify or ignore the whole language used; *2 Purs. Cont. (7th ed.), 632 et seq.* The entire instrument must be examined to get at its substance and meaning. (*Canal Co.* v. *Hill, 15 Wall., 94.*) The stock is to be held by and to stand in the name of the appellant. It belongs to the appellee, not absolutely and unconditionally, but subject to the contingency mentioned, the payment to be made by the appellee. Until that is done no transfer is to be made. The title is to remain in the seller. No time is specified at which the payment is to be made or the stock transferred; in fact, there is no undertaking on the part of the appellee to pay. He assumed no obligation. So far as he was concerned the purchase was optional. He could not be compelled to complete it by accepting and paying for the stock. This was the attitude of the parties. The question arises, then, at what time were these two acts, viz., the transfer of the stock and the payment, to be performed? It is a question of intention to be derived from the terms of the contract. There being no time expressed this intention must be gathered by considering and comparing the different parts of the paper. It would scarcely

be a reasonable construction to hold that the appellant intended that a transfer should be effected and the title pass out of him before the receipt of the price. The more reasonable and we think the obvious meaning is that the two acts were to be performed simultaneously and within a reasonable time. They were concurrent and dependent conditions. If this is not the true construction of the paper, then the latter clause is devoid of any practical meaning or effect.

"Where the buyer is by the contract bound to do anything as a consideration, either precedent or concurrent, on which the passing of the property depends, the property will not pass until the condition be fulfilled, even though the goods may have been actually delivered into the possession of the buyer."

Benj. Sa. (2d ed.), p. 234.

See 1 Pars. Cont. (7th ed.), 564 (Note C 1) *et seq.*

This rule was cited with approval and applied to a contract somewhat similar in *The Elgee Cotton Cases*, 22 Wall., 180.

The contract in that case recited "we have this 31st of July, 1865, *sold* unto Mr. L. our crop of cotton, etc., to be delivered at the landing at Ft. Adams, and to be paid for when weighed, Mr. L. agreeing to furnish at his cost the bagging, rope, and twine to bale the cotton unginned; and we do acknowledge to have received, in order to confirm this contract, the sum of thirty dollars."

It was contended that this was an executed contract and changed the ownership of the cotton. But the Court held, notwithstanding the recital of an absolute sale, that the ownership did not pass without delivery and without payment. That the contract was entire and so long as something remained to be done under it, it was not a completed sale. The Court say that no sale upon credit was intended. There was, therefore, no reason why the ven-

dor should part with anything before the purchase money was paid or tendered. The possession was certainly retained. The principles upon which this case was decided apply with equal force to the case now before the Court; here it was contemplated that the appellant should retain possession of the stock; that it should remain in his name; it was not to be delivered until paid for. This stock was not distinguishable from other stocks held by appellant and it was not contemplated that there should be any change of possession or transfer made of the stock until payment was made. These facts are obvious and undisputed. It is likewise true that no sale upon credit was intended in this case. The provision in regard to interest does not indicate such an intention; the appellant had himself recently purchased the stock upon credit, and that provision was intended merely to indemnify him against what he would have to pay on that account, between the date of the contract and the time of its consummation by the payment and delivery of the stock to the appellee.

In the case of French *v.* Hay, 22 Wall., 231, the question arose as to the legal effect of an instrument in substantially the following form: "For and in consideration of the sum of $5,000 with interest from this date, *I hereby assign and transfer* to James French all the judgments, notes, or claims, etc., to be held by the said French, his heirs, and assigns as his individual property, *upon payment to me of the above mentioned sum of $5,000 with interest from this date.*" This writing was signed by Hay alone. Accompanying it was a power of attorney from Hay to French authorizing him "for me and in my name" to sell, collect, pledge or otherwise dispose of the same as fully as if they were his individual property. The object of the power was to give French the control of the judgments and claims, as they were incapable of manual delivery, but not in his own name.

The Court held that this instrument was, at most, but an executory agreement of assignment. That the utmost effect that could be given to the two instruments was that they amounted to an offer that if French would pay the $5,000 he should be the owner of the judgments. The transmission of the title and the payment of the price were intended to be contemporaneous. The Court laid some stress upon the fact that the instrument was signed by Hay alone, and that it was not averred that French had promised to pay the $5,000. The words of present assignment and transfer were stronger in the instrument the Court was construing than are those contained in the instrument now before the Court. That paper, like the one now under consideration, expressed no time at which the payment was to be made. The power of attorney showed that Hay intended to retain the judgments and claims in his own name, but it placed the same wholly within the control of the vendee. The instrument executed by the appellant also shows an intention to keep the stock in his name, but does not clothe the appellee with such powers of control as were conferred on French by the power of attorney. There is a strong parallel between these instruments; the intention was not expressed in direct terms in either, but had to be gathered by construction upon examination of all the provisions contained in the several writings.

The principal reasons that influenced the ruling of the Court, were the facts that French did not sign the paper and bind himself, that no time of payment was fixed, and, that it was evident from the power of attorney that Hay intended to hold the securities in his own name until the consideration was paid. The same intention in these particulars is equally clear in the writing under consideration in this case.

First. The price to be paid is fixed, but no time of payment is expressed.

Second. The appellee is not a party to the instrument; and

Third. The language plainly indicates that the stock was to stand in appellant's name until paid for.

Where a contract is made for the sale of goods and nothing is said about payment or delivery, it is the general rule that the property passes immediately, if nothing further remains to be done to the goods. But if anything remains to be done as between the parties, such as ascertaining the quantity or separating the property from a common mass, *or the payment of the price*, before the goods are to be delivered, until that is done the right of property does not accrue to the buyer.

Parsons Cont., *supra*.

In the case of Joyce *v.* Adams, 8 N. Y., 291, cited by Parsons, the subject of the contract was cotton in bales. The sale was made by a cotton broker and bought and sold notes were delivered to the buyer and the purchaser, in which the number of bales and the marks on them and the price to be paid were described, and it was provided that the buyer was to pay storage, insurance and interest after ten days, and to deposit $5.00 per bale. The cotton was deliverable 30 days from the date of the sale and the price payable on delivery. The contract was held to be executory on the ground, among others, that the price could not be ascertained and paid, or the cotton delivered, under the terms of the contract, until it had been weighed.

The case of Kelley *v.* Upton, 5 Duer, 336, was an action by the vendor of stock against the purchaser for the price. The contract was in the following form, and was signed by Upton, the purchaser, alone:

"I have purchased of Kelley, Townsend & Co. three thousand shares of the stock of the Lindsay Mining Company, at 72½ cents per share, payable and deliver-

able, buyer's option, in ninety days, with interest at the rate of 6 per cent. per annum, and 6¼ cents per share commission, and have deposited with them one hundred shares of McCullock Gold Company stock as security for the performance of this contract."

The Court held it to be an executory contract, on the ground that delivery of the stock and payment of the price were to be simultaneous acts. The rules of construction are well and clearly stated and applied in the following extract from the opinion of the Court:

Notwithstanding the words "I have purchased," literally construed, may bear the interpretation that has been given to them, we are clearly of the opinion that the contract upon which this action was founded was not executed, but executory; not an actual and present sale, but an agreement to sell, to be carried into effect on a future day. The intention of the parties, in agreements of this nature, is to be collected from the whole instrument; it is the intention, thus collected, that the Court is bound to carry into effect, and in doing so, the literal import of particular words, when inconsistent with the intention thus ascertained, may be and in numerous cases has been disregarded. In Decker *v.* Furniss, 3 Duer, 292, the intrument which related to the sale of a steamboat began with the words "W. H. Brown sells to M. P. Furniss the one-half of the steamboat 'Rhode Island,'" yet, in reversing the judgment of this Court the Court of Appeals held that the contract had not the effect of vesting an immediate title in Furniss, but was an agreement to sell, and not a sale, and that, although the words used denoted a present transfer a future only was intended. In determining the true character of a contract of sale, as executed or executory, the question must always be, whether the intention was to vest in the purchaser an immediate and absolute title to the thing sold, without reference to the payment of the price, or

whether the delivery of the thing and the payment of the price were to be simultaneous acts, for in this last case it is certain that until delivery the title remains in the seller. And we deem it to be equally certain that where delivery and payment are to be concurrent acts, the promises of the parties are dependent and conditional and neither, therefore, is entitled to bring an action against the other for his refusal to perform without showing on his own part an actual performance or a legal offer to perform.

Lester *v.* Jewett, 1 Kern, 454.

Applying these rules to the contract before us, it seems to us quite evident that it was not the intention of the plaintiffs to give the defendant a present and absolute title to the stock, so as to enable him, at once, to claim its delivery without paying, or offering to pay, any portion of the stipulated price; yet such was the necessary consequence if the defendant became the owner of the stock by the mere execution of the agreement. As to the allegation that the plaintiffs were to retain the possession of the stock as their security for the payment of the price, we disregard and reject it as simply gratuitous, since the agreement contains not a solitary phrase from which an intention to pledge the stock, as belonging to the defendant, can be inferred."

See Nesbitt *v.* Berry, 25 Pa., 208.

If there were any doubt about the intention, as expressed in the memorandum, the evidence would set it at rest. The appellant testifies distinctly that it was not his intention to part with the stock until payment was made. He says: "I regarded the transaction as a conditional sale of so much stock to be delivered, and the title to pass only when paid for. As he had given me no

contract, I did not consider that I could compel him to take the stock and pay for it, even if he had the money. I did not even have a copy of the memorandum which he held."

Rec., 136.

The appellee does not contradict this statement or testify in regard to the intention and understanding between them as to the time the stock was to be transferred or delivered. He testifies "it was agreed that all the net profits of my one-third interest should be applied toward the payment of the $8,000, saving only what might be required for my necessary living expenses (Rec., 77); and the Circuit Court so found.

Op. of Judge Caldwell, Rec., 263.

If this is true, it corroborates the appellant's explanation as to his intention, for the road was not self-supporting or in a condition to realize any net earnings at the date of this transaction, nor did the appellant regard its future prospects as good. He says, 'the earnings of the road were very small, and its ability to sustain itself was not clear."

Rec., 131, 137–8, and 218.

Under these circumstances it would be unreasonable to attribute to the appellant an intention to part with his title upon the terms of payment testified to by appellee, and before the same should have been paid for.

In any view of the case, whether upon the face of the contract alone, or in connection with the testimony of the parties, we submit that the contract was executory and the title remained in the appellant subject to the payment of the price. Nothing has ever been paid for the stock and, according to the contention of the appellee, he is not bound by any personal liablility for the pay-

ment, but the appellant must look to the earnings of the road for the price.

Equity will not enforce such a contract by compelling the one party to carry out an agreement by which the other is not bound.

"An agreement in its nature imports a reciprocity and a *quid pro quo*, and when that reciprocity does not exist the power of enforcing it does not exist."

There must be an absolute mutuality of obligation growing out of the contract itself, so that each party has the right at once to hold the other to a positive agreement.

3 Par. Cont., 363–5.

The right to specific performance of a contract, so far as the question of mutuality is concerned, depends upon whether the agreement itself is obligatory upon both parties, so that upon the application of either the Court would coerce a specific performance.

Duvall *v.* Meyers, 2 Md. Chy., 401.

A promise which is to be a good consideration for a reciprocal promise or agreement must be such as can be enforced. It must, therefore, be not only lawful and in itself possible, but must be reasonably definite, and it must ~~not~~ be a thing which the party making the promise is not already bound to do or to grant.

These principles are elementary and require no citation of authority. The contract sued on is lacking in every element of mutuality, either of obligation or of consideration. If the agreement was, as claimed by the appellee, that the stock was to pay for itself by applying what of the net earnings should be left after providing for the support of his family, it does not give the contract the quality of mutuality. Such an agreement does not imply any personal undertaking or promise on the part of the

appellee, nor does it import any consideration. It was nothing more than an agreement that the appellant might have sufficient of the earnings of the property which he was selling to the appellee to pay himself an amount agreed upon. The appellant as the owner of the stock was entitled to its earnings, and no consideration in support of the sale could accrue from such an arrangement.

The appellee did not undertake to perform any personal service as a consideration for his purchase. He was at the time of the agreement working for the railroad company at a salary of $75 per month, and continued during all the time of his employment to receive a salary. It is true he attempts to base his service subsequent to the purchase upon his interest in the property, and testifies that after the 1st of January, 1882, he never considered he was working for a salary; that no regular account was kept against himself or the appellee from that time until December, 1883, and that each drew just what was necessary for the support of his family and no more.

These statements were made for the purpose of establishing a consideration growing out of the personal services rendered by him in connection with the road. They do not import any agreement for service previous to or contemporaneous with the sale, and are not sustained by the record.

Appellant alleged in his answer that appellee worked for a salary of $75 per month from the time he came to the road until the first of December, 1883, when his salary was advanced to $100 per month. (Record, p. 40.) And in his deposition testified that appellee came to Washington, Arkansas, and went to work for the company at a salary of $75 per month; that no change was made until the first of December, 1883, when he advanced his salary to $100 per month.

Rec., 129–145.

And he testified further, "why or on what ground he should now consider that he was not on a salary at that time I am at a loss to understand. I was on a salary all that time, and never took money without having a charge made of it. Almost immediately after I had advanced his salary, and directed him not to draw any more money from the agent, I found, when I called for our balance at Mr. Carruth's, that some of it was withheld to cover a deficiency of Mr. Paul Beardsley's account there. The amount was small, and it was allowed. It kept getting a little larger until the latter part of December, 1884, when I directed Mr. Carruth to credit him on January 1st with whatever it might take to balance his account and charge the road with it. I also told Mr. Carruth that after that he must collect any over drafts Mr. Paul Beardsley should make with him.

Rec., 147.

Mr. Carruth testified that appellee was under a salary of $75 per month until December, 1883, when it was increased to $100 per month.

Rec., 218.

Appellee alleged in his bill and testified that his salary was fixed by the appellant about December, 1883, at $100 per month, and that he protested against it on the ground that he thought his salary should be as large or larger than appellant's, which was fixed at $200 per month. It is also in evidence that appellee accepted the credit for overdrafts referred to above as a gratuity and thanked the appellant for the same. These facts are altogether inconsistent with his claim that he was not working for a salary. Why, if that were true, would the appellant and Mr. Carruth, the treasurer of the company, have treated his excess as overdrafts? Why would he have accepted the same as a gratuity? Why, if it was in-

consistent with the understanding and relations between the appellant and the appellee, that appellee should be working on a salary prior to December, 1883, was it not equally inconsistent after that time? What could have been the appellant's object in providing for salaries at that time, if none had been provided for previously? Appellee would have us believe that up to December, 1883, he and the appellant were working together with the mutual understanding that each was to devote all his time to the road and take from the earnings only what was necessary for the subsistence of his family, and, while this agreement was in operation, that appellant suddenly, without any consultation with him, changed their relations in violation of the agreement existing between them by providing salaries for each of them, and that he made no objection on the ground that it was in violation of the agreement between them, but did object on account of what he considered to be the inequality of the salaries. If all this had been true, would not the appellee have made the agreement between them the basis of his objection?

These questions were settled by this Court in the case of Dorsey *v.* Packwood, 12 How., 126, which was the case of an agreement on the part of Packwood to transfer unto Dorsey a half interest in a plantation and personal property therein "as soon as said Dorsey shall pay for one-half the cost of said property, either with his own private means, or with one-half of the profits of the plantation." Dorsey and Packwood were near relatives. Dorsey had persuaded Packwood to purchase the plantation with the expectation of a share in it. He assisted in the financial arrangements necessary to the making of the purchase and in the management and superintendence of the property, without making the usual charges therefor. The Court held that the contract could not be enforced for want of mutuality. That it imposed no

obligation on Dorsey. That he was not bound either to render service or pay money as a consideration. That Packwood could not maintain a suit upon it to compel Dorsey to do anything. That the agreement of Packwood to convey half the land in consideration of a payment from the profits of the plantation, which belonged to him equally with the land itself, was but the promise of a gift, a *nude pact*, which equity will not enforce.

In the case of Dean *v.* Nelson, 10 Wall., 158, a contract by which Dean sold and transferred gas stock to Nelson, for which the latter executed his note whereby he promised to pay $5,000 and interest out of the net receipts and earnings of the stock transferred, in quarterly installments equal to the quarterly net receipts or earnings, and providing if he should fail to pay any of the installments quarterly after the receipt by the company of the net earnings, then the balance remaining unpaid should become due and payable, was before the court, and Mr. Justice Bradley, who delivered the opinion, said: "Had the transaction been merely an agreement for a sale upon the terms on which the sale was actually made, and this a bill by the vendee for specific performance, we should find great difficulty in distinguishing this case from that of Dorsey *v.* Packwood."

In the case of Woodward *v.* Harris, 2 Barb., 441, Harris bid for a mail contract with the Navy Department, and before the proposals to the Government were accepted, entered into a contract with Woodward, which was signed by himself alone, agreeing to assign to Woodward the contract with the Government, if he obtained it, upon Woodward's furnishing to the Department the necessary security for the performance of the contract and paying Harris $5,000 per year while the contract continued. Upon a bill filed by Woodward to compel a specific performance, it was held that there was a want of mutuality, which is always necessary to warrant the courts entertaining jurisdiction. The Court said:

"Harris alone it seems is bound by the contract. He has agreed with Woodward that he would sell the contract made with the Government to him, but Woodward has nowhere agreed that he would buy. It has been left optional with him whether he would or not.

"This is a sufficient ground of objection to entertaining a bill for specific performance. Courts of equity act upon the ground that the remedy, if it exists at all, ought to be mutual and reciprocal as well for the vendor as for the purchaser."

In Jones *v.* Noble, 3 Bush, 694, a bill was filed by the representatives of J. R. Shivell to enforce the performance of a contract in writing as follows:

"This instrument of writing is to certify that I have this day sold to J. R. Shivell a certain tract of land described in a deed which has been duly acknowledged in the Henry County Court clerk's office, which deed is now in my possession, and which is to be delivered to said Shivell on the payment of $2,000 on the 25th of December, 1863.

(Signed) "J. B. JONES."

Jones, in his answer, admitted the execution of the deed as stated in the writing filed with the petition, and also the execution of that writing, and said he was in embarrassed circumstances, was anxious to sell the land to raise money to relieve him, and only agreed to sell the land to Shivell upon condition that he paid him on the day therein named; that he retained the deed and possession of the land, and never intended to part with either until the money was paid. It was not alleged in the petition or shown that Shivell was under any obligation to pay for the land. He did not sign the writing. The Court, in ruling on the instrument, said:

"It is obvious that Jones could not have sustained an action to compel the execution of the contract on the part of Shivell; but it was left to his election whether or not he would pay for the land and accept the deed pre-

pared by Jones. If the money was never paid, the deed was not to be delivered; and that, by the writing, was entirely at the discretion of Shivell.

"This case is within the rule recognized by this Court repeatedly, that to enable either party to compel a specific execution, the contract must be mutually binding on each. * * *

"But another reason quite sufficient may be stated why the relief could not be granted, even admitting that there was a contract binding between the parties: the sale was a conditional one, the payment of the price being a precedent condition to the conveyance."

So if it is optional with the complainant to retain the land or convey it, specific performance will be refused.

Maynard *v.* Brown, 41 Mich., 298.

The party seeking specific performance must be bound by the *contract itself.* The fact that the appellee rendered services in and about the railroad in the expectation that he had acquired, or would acquire the stock, will not supply the defect growing out of the want of mutuality in the contract. He did not bind himself by the contract to render such service as a consideration for the stock. On the contrary, his claim is that the stock was to be paid for out of the earnings. Besides, his service was paid for in the same manner that other service was. The facts in Dorsey *v.* Packwood, *supra,* were stronger in this respect than they are in this case. Packwood resided in New York; Dorsey lived at New Orleans near the property. He was instrumental in persuading Packwood to make the purchase in the expectation of sharing in it. His firm extended financial aid to Packwood to enable him to complete the purchase, and he took an active interest in the management of the property. All this in the expectation of acquiring an interest in the purchase.

"As a general rule, the question of mutuality is to be

determined by the contract itself, and is not affected by circumstances accruing after the contract is made, and the rights of the parties are fixed."

Cooper *v.* Penn, 21 Cal., 410, 411.

The Court in this case refused to enforce a contract for the conveyance of land in consideration of personal services contracted to be rendered by the plaintiff in consideration of the conveyance, and a part of which had been rendered, on the ground that equity will not enforce a contract for personal services; and the remedy not being mutual, the Court would not interfere to compel a specific performance at the suit of a party who would not himself be compelled to perform.

"The time at which the mutuality must exist, in order that it may produce these binding effects, is that of concluding the agreement between the parties. The contract should properly be mutual *ab initio*."

Pomeroy on Specific Performance, sec. 166.

In Johnson *v.* The Shrewsbury & Birmingham Railway Company, 3 De Gex. M. & G., 914, the plaintiffs had contracted with the railway company to work the line, keep it in repair, &c., for a term of years. On a bill filed by the plaintiffs to restrain the defendant from violating the agreement and for compelling it to perform, the Court held that the plaintiffs could not have been compelled to perform their engagements for personal service. That mutuality was therefore out of the question, and refused to grant the relief sought.

Stocker *v.* Wedderburn, 3 Kay & Johns., 404.

"It is a general principle that when, from personal incapacity, the nature of the contract, or any other cause, a contract is incapable of being enforced against one party, that party is equally incapable of enforcing it specifically against the other, though its execution in the latter way

might in itself be free from the difficulty attending its execution in the former."

Marble Company *v.* Ripley, 10 Wall., 359.

There is another reason why the Court should not decree specific execution of this contract. It is a contract for the sale of stocks, and equity will not entertain jurisdiction for the enforcement of such contracts.

"In the United States, the rule is settled by the weight of authority that contracts concerning stocks and bonds of corporations, like those concerning Government securities, will not be specifically enforced."

3 Pom. Eq. Jur., sec. 1402, note, citing numerous cases.

In Ross *v.* Union Pacific Railway Company, Wool., 26, Mr. Justice Miller held that specific performance should not be decreed of a contract to deliver railway shares, as follows:

"I see no sound reason for any distinction between them and Government stocks. * * * No special value attaches to one share over another, and the money which will pay for one will as readily purchase another. The damages, then, for failure to deliver any such shares may be awarded at law, and be an adequate compensation for the injury sustained."

Of these views, it is said in Frue *v.* Houghton, 6 Col., 318, that they appear to be sustained by the weight of authority, and upon principle seem equally applicable to to the shares and stocks of all corporations concerning which the same facts therein recited exist.

Held in Pierce *v.* Plumb, 74 Ill., 326, that specific performance should not be decreed of an agreement to transfer railway shares. The Court say:

"There is no showing whatever of any particular circumstances as regards this stock; that it possesses any

peculiar value; that appellants want it in specie, and that they cannot otherwise be fully compensated."

In Barton *v.* DeWolf, 108 Ill., 195, Pierce *v.* Plumb was reaffirmed, the Court saying:

"To authorize a decree for the performance of such a contract specifically, it must appear that the remedy at law is inadequate. *This, from all the adjudged cases, is indispensable.* It is true that it is alleged that this stock is seldom found for sale. That is no doubt true of the stock of a vast number of corporations in the country, and can form no ground for equitable interposition."

NOR WILL THE SUIT LIE AS ONE TO ENFORCE A TRUST.

The Circuit Court held in this case that the instrument sued on converted the defendant into a trustee of the legal title for the plaintiff. That "the holder of the legal title may convert himself into a trustee by making a valid declaration of trust *upon good consideration.*"

Citing Perry on Trusts, sec. 384, note 4.

And in the next paragraph the Court say: "The writing does not contain the whole contract; that was verbal. The writing was executed after the contract was made and only disclosed a part of it. The contract bound both parties and each could enforce his rights under it."

Opinion of the Court, Rec., 269.

The same author (Perry) says at sec. 95: "Where an agreement is entered into for a *valuable consideration*, and a trust is intended, the mere form of the instrument is not very material; for if the trust is not perfectly created or executed by the instrument a court of equity can enforce it as a contract. Wherever a *valuable consideration* is paid, the contract will be executed as near to the intention of the parties as possible."

There is no controversy about the soundness of

these rules. Let them be applied to the facts of this case. The agreement is confessedly unilateral. It was for that reason the Court looked beyond it to the parol evidence. We have shown the view taken by the appellee himself as to the manner in which the stock was to be paid for, and the same view, it will be found, was taken by the Court on page 266 of the record, where it is stated in the opinion, "it is obvious therefore, that Alderman sold his stock upon the understanding that the defendant, J. D., was to pay therefor as the means derived from the operation of the road would enable him to do so, and it is equally clear that the sale of the stock by the defendant, J. D., to the plaintiff was made on the same terms. It is undisputable that the parties understood that the road and its earnings was the only source from which the means could be derived to liquidate the obligations incurred in the purchase of the stock by the Beardsleys. They had no capital and the corporation itself was insolvent."

That these facts did not constitute a good or valuable consideration, I think is abundantly established by the cases heretofore cited. We have already shown that there was no agreement or contract on the part of the appellee to render services as a consideration for the stock. The Court referred in its opinion to the labor and services performed by both the parties subsequent to the execution of the contract, but there was no finding or assumption by the Court that the services of the appellee were rendered in pursuance of any contract between them as a consideration for the purchase by him of the stock, and there is no evidence whatever in the record to that effect. The Court must therefore have referred, in speaking of the binding effect of the contract upon both parties, and the right of each to enforce his rights under it, to the agreement for the application of the net earnings of the road above referred to, and based the ruling as to the creation of a trust thereon.

The finding that the appellant purchased from Alderman on the same terms as it is claimed he sold to the appellee, if the Court attached any special significance to it, was not supported by the evidence. There is no evidence that the appellant did not have the means to pay Alderman. On the contrary they both testify that the agreement was that appellant should pay for the stock within a reasonable time; and appellant says he took no exception to the rate of interest because he expected to see Alderman in a few weeks and close the matter by selling him property he owned in West Virginia and elsewhere, and Alderman testifies to the same facts.

While it is true that the road was in a weak and insolvent condition neither the appellee nor any other witness has testified that appellant was unable to pay Alderman for the stock he purchased of him. If the facts were otherwise, it would not supply the want of a valuable consideration in support of the sale to appellee, for it can hardly be maintained as a legal proposition, that because Alderman was willing to give his stock to appellant, therefore appellant would be compelled to do the same by the appellee; not until the *golden rule* shall become the rule of conduct prescribed by the law would such a conclusion follow.

There was no direct connection between the purchase by the appellant and his agreement to sell to the appellee; they were independent transactions. The history of both of these transactions down to the date of the memorandum of sale is detailed at some length in the pleadings and the testimony of the parties. The appellee alleges in his bill that he went to Washington, Arkansas, at the solicitation of the appellant, and ascertained that Alderman's interest could be purchased for about $10,000 in cash; that he then went to the city of New York at the suggestion and solicitation of the appellant, and there attempted to secure a loan of that sum for the purpose of

making such purchase; that he failed in securing a loan, and returned to Washington about November 1st, and agreed with appellant to work for the company at $75 per month for a short while until he could make more satisfactory arrangements. Within a week or two after returning they ascertained from Alderman, who was then in West Virginia, that he would dispose of his half interest in said railway for $12,000 upon a credit, and thereupon they agreed together that defendant should write to Alderman and accept the terms of sale, appellee insisting upon taking the whole of Alderman's interest for the sum of $12,000, to the end that the railway should become the joint property of them, share and share alike; but it was agreed that he should have only two-thirds of said interest, which would make his interest one-third of the whole property; that after this agreement appellant wrote to Alderman that he would take his interest, and in due course of mail received an answer accepting the proposition.

These allegations are denied by the appellant and the facts detailed in the answer above in this brief. The appellee, in support of the allegations of his bill, testified that he went to New York City with a view of *selling some mining properties which had been placed in his hands for sale on commission*, the consummation of which would enable him to buy Alderman's interest; that failing in this, he returned to Washington under an understanding that he would work for the Company for $75 per month until some time when they could make some satisfactory agreement about the interest in the railway, or until he could do better in some other business; that immediately after his arrival in Washington they discussed the purchase of the Alderman interest; that appellant told him Alderman was very anxious to sell his interest for $12,000 *upon a very liberal credit;* that having no acquaintance with Alderman, he urged

his brother to write him and purchase his half interest for the sum of $12,000, upon a credit for his, appellee's, account, with the understanding that he should apply all the profits of said interest to the payment of the $12,000, except what might be necessary for the actual living expenses of himself and family; that appellant would not fully agree to this, but said that he was going to spend Christmas with his family in West Virginia and would then purchase Alderman's interest upon the best terms he could make with him as to price and time, and let appellee have two-thirds of said interest upon the same terms and conditions which he should make with Alderman; that a short time after this agreement appellant received a letter from one Paramore, of St. Louis, saying that Alderman had offered to sell him his one-half interest in the road and asking for information as to its condition; that appellant consulted with appellee immediately on receipt of this letter, and they agreed that appellant should at once write to Alderman and accept his proposition to sell him, J. D. Beardsley, his half interest in said railway for the sum of $12,000 upon a credit, and that witness should have two-thirds of said Alderman's interest, equal to one-third of the whole, for the sum of $8,000, upon the same terms he should make with Alderman as to price and time; that appellant immediately wrote to Alderman that he would accept his proposition to sell his interest for $12,000 and would go home about Christmas and agree with him about the terms and payment, and by return mail received Alderman's answer; that they had talked this purchase over between themselves previous to Mr. Paramore's letter and it was agreed that all the net profits of his, appellee's, one-third interest should be applied toward the payment of the $12,000, except only what might be required for his necessary living expenses. That after the agreement

regarding the purchase was made in November, appellee went regularly upon the trains as conductor, etc.

Rec., 76 and 77.

The appellant testified that sometime in the year 1881 he got a letter from the appellee saying he was going east and would pass through St. Louis on the way to New York and desired appellant to meet him in St. Louis, which he did. In a conversation in St. Louis appellant expressed a desire to extend the road if the money could be gotten, when appellee said he had no doubt he could get all the money appellant would need in New York, and would look into the matter when he got there. While in New York appellee wrote to him for information in regard to the road and the country, which appellant sent him. That nothing came of it. That after appellee had been in New York for some time he received a letter from him saying he had failed to accomplish his object there and requesting employment on the road. Appellant wrote him that the earnings of the road were small and they did not need him. Appellee wrote again offering to come for $75 per month and appellant wrote him to come. In pursuance of this arrangement he came and went to work in the early part of November. Soon after his arrival appellant received a letter from Mr. Paramore, the president of the Texas and St. Louis Railway, informing him that Alderman had offered him his interest in the road and asking about its condition; it occurred to him that this, if carried out, would involve them in trouble with the Iron Mountain Railway, and without any consultation with anyone, appellant wrote at once to Mr. Alderman offering him $12,000 for his stock if he would give him time, and by return mail received an answer accepting his offer. Appellant testifies further: "I state most positively that there was no agreement between myself and Paul Beardsley that I should

buy this stock, or any part of it, in his interest, nor was there, as he says, any correspondence to ascertain if Alderman would grant a credit, nor was he, appellee, at all consulted. From the time Mr. Paul Beardsley came to work about the first of November, 1881, up to the time I wrote to Mr. Alderman that I would take the stock I had neither written to Mr. Alderman nor received any letter from him about the stock. When Mr. Paul Beardsley learned that I had purchased Mr. Alderman's stock and now had all the stock of the road he began to importune me to let him have part of it. Sometime after I had purchased from Mr. Alderman I yielded to his importunity so far as to agree to sell him $33,250 face value of the stock, for which he was to pay me $8,000. The stock was not to be delivered until paid for. There was no previous understanding that this was anything more than an agreement to sell so much stock for delivery when the money should be paid. There was no connection whatever between Mr. Paul Beardsley and my purchase from Mr. Alderman. The interest was made to date from the time of my purchase from Mr. Alderman because I desired, if the sale was consummated, that the interest should offset the interest on the $8,000 I owed Mr. Alderman. I gave Mr. Paul Beardsley the memorandum, a copy of which he filed in his complaint, either the next day after the conversation in which I told him I would sell him the stock or, at latest, the second day after.

Rec., 122 and 123.

Again, at page 132 it appears appellant was asked several questions to which he replied, viz.:

Q. Paul Beardsley says in his complaint that after he came to Washington you and he consulted together about buying Mr. Alderman's stock, and that having ascertained that Mr. Alderman would sell it on a credit, it was decided between you that you should buy it and let him have two-thirds of it. Is that correct?

A. That is a mistake. I never contemplated buying it until I got Col. Paramore's letter. On reading that I decided instantly that it was necessary to buy it if I could to protect my investment in the road. I received Col. Paramore's letter in the mail that came in then at noon. I at once wrote Mr. Alderman that I would take his stock at twelve thousand dollars if he would give me time to pay for it. This letter went out on the mail which left the same day at 2 o'clock P. M. Previous to writing this letter I had had no correspondence with Mr. Alderman for some weeks. I doubt if there had been any correspondence about the purchase. What had passed was, I think, verbal. When we met, Mr. Alderman lived at Belpre, Ohio, but had lumber mills in West Virginia, where he spent most of his time. It was always a week before I could get an answer to a letter from him, but it took oftener ten or twelve days. As Mr. Paul Beardsley had only been there at most five or six days, there was not time for any correspondence, and he is evidently mistaken. When I wrote the letter I did not know whether Mr. Alderman would grant a credit or not.

Q. Did you consult Paul Beardsley in reference to making this purchase after getting Col. Paramore's letter and before you wrote to Mr. Alderman?

A. I did not. I told him afterwards, but I do not think I told him until after I received Mr. Alderman's reply.

Q. Did you afterward sell Mr. Paul Beardsley some stock; and, if so, how much?

A. I did sell him some stock, or, as I understood the transaction at the time, I agreed to sell him $33,250 face value of the stock of the Washington and Hope Railway Company, which I was not to deliver until paid for. The price to be paid was $8,000.

Q. When was this sale?

A. On December 31, 1881.

Q. Was that after you had purchased from Mr. Alderman?

A. Yes; that was about six weeks or more after I had bought from Mr. Alderman.

Q. Did you have the stock on hand at the time you made this sale to Mr. Paul Beardsley?

A. I did.

Q. Why did you not deliver it to him then?

A. Because he did not have the money to pay for it.

Q. What were the circumstances of the sale and the terms?

A. Mr. Paul Beardsley had been importuning me to sell him some of the stock from a time beginning soon after his arrival. He said he had no money, but represented that he had left a valuable mine and machinery in California which he was negotiating to sell and which would realize a good deal of money. He proposed to pay from this source for any stock I would let him have. I finally agreed to sell him thirty-three thousand two hundred and fifty ($32,250) face value of the stock for eight thousand dollars ($8,000). This was substantially at the same rate I had paid Mr. Alderman. The understanding was that the stock was not to be delivered until it should be paid for. It was also agreed that the $8,000 should bear interest from the date of my purchase from Mr. Alderman.

Q. Was there any connection between this sale and your purchase from Mr. Alderman?

A. No; there was not.

Q. Then why was the interest to run from the time of your purchase from Mr. Alderman?

A. Because I sold him the stock at almost exactly the same price that I was to pay per share to Mr. Alderman for what I got from him. If I had not made the interest run from that date I would have been agreeing to sell stock for less than I had bought same for.

Q. When did you expect to deliver him the stock?

A. I expected to deliver it whenever he should pay for it.

Q. How long did you expect the transaction to stand open?

A. From what he told me about the probability of selling the mine, I did not expect it to stand open long.

Q. When did you give him the memorandum of the transaction which he exhibits?

A. I gave it to him the next day after I had agreed to sell him the stock. It was January the 1st, 1882.

Q. Why did you give him this memorandum? Did he ask you for it?

A. I gave him the memorandum because, in thinking

of the matter that night, it occurred to me that there might come up some questions afterwards about the time from which the interest was to run, or the exact amount of stock I had agreed to let him have for the money. The memorandum was made by me without any request from him. He did not ask for any writing.

Q. What did you intend to show by the memorandum?

A. The principal idea was to fix the date of the interest and the amount of stock, but I intended it to show that I had agreed to sell him $33,250 face value of the stock, to be delivered only when he should pay for it.

Appellant's testimony in regard to his purchase is corroborated by Alderman, who testified that there was no correspondence between them on the subject; that he had never offered to sell appellant the stock for $10,000, on a credit, and the first intimation he had that appellant would buy the stock was the letter of November 10th.

Rec., 260, 261.

We have stated the pleadings and testimony at length in order that they may be examined and considered by the Court in a connected form.

The statements of the appellant as to the previous agreement in regard to salary are corroborated by a passage contained in his letter of October 24, 1881, to the appellee, which contains the following (Rec., 87 *et seq.*): "I note what you say about coming here. If you could at all arrange to buy Alderman it would be best, but if not I will try to make the road pay you $75. Of course you will be worth more than $25 more than any one we could get. The question is what the road as it goes now can stand. We will try it anyway. The wo·k is laborious, and of that kind you ought not to have to do. What I mean is if you go on the road as conductor you have to help load and unload cotton and freight. I don't mind doing this myself at all, but I hate the idea of your doing it *as an employee*. If nothing better can be done now we may work up to better." This was the last letter written

by the appellant to the appellee before he came to Washington to go to work on the road, and it evidently contains the whole of the understanding and agreement as to appellee's employment. It contains no reference whatever to services by the appellee in any other capacity than as an employee, and it also discloses the fact that the appellee sought the employment at a salary agreed upon with knowledge of the character of the services he would be expected to perform.

It will be observed also that there is a variance between the allegation of the bill and the testimony of the appellee in regard to what occurred just prior to the purchase of Vinton Alderman's stock. In his bill appellee makes no reference to the letter received by the appellant from Paramore, which was the cause of his sudden determination to buy Alderman's stock. After the answer in this case was filed and that circumstance disclosed, the appellee's deposition was taken and his second statement, under oath, made. Having learned of the fact of Alderman's letter through the allegations of the answer, he corroborates it in his deposition and claims to have been consulted by the appellant as to the course that was taken in consequence of the receipt of that letter. Inasmuch as a very material change was made in their plans on account of this letter, it having been the intention before the receipt of the letter from Paramore to postpone the matter until the appellant should go to West Virginia during the Christmas holidays, and this arrangement having been suddenly altered by reason of said letter and an immediate application to purchase made upon consultation between them, it is somewhat remarkable that the appellee should either have forgotten the circumstance entirely, or, if he remembered it, have omitted it from the allegations of his bill. This circumstance very strongly corroborates and sustains the inherent truth of the testimony of the appellant. He would very natur-

ally have believed that the purchase by Paramore would have the effect he states in his testimony, and so believing, being a man of decision and swift action as the record very plainly shows, nothing was more natural than for him to have at once determined and acted as he testifies he did. There is also a variance between the bill and the appellee's testimony in regard to the object of his visit to New York. He alleges in the bill that he went to New York at the suggestion and solicitation of the appellant and there attempted to secure a loan, &c. In his deposition he says he went with a view of selling some mining stock that had been placed in his hands for sale on commission.

These matters were put in issue by the pleadings; the allegations of the answer were responsive to the averments of the bill. The burden of proof was on the complainant (the appellee), and he was required to establish them by the preponderance of the evidence. As was said by this Court in the case of Nickerson *v.* Nickerson, 127 U. S., 676, the allegations of the bill are expressly denied by the answer, and the statements of the appellee in his deposition are flatly contradicted by the appellant in his deposition. In that case the Court held that the complainant had not established her case by a sufficient weight of evidence to entitle her to relief, although she was to some extent corroborated by the testimony of her mother. Here the weight of the evidence is decidedly against the averments of the bill. Each of them is denied by the appellant in his answer and testimony, and in many particulars, where the testimony is in conflict, he is corroborated by the circumstances and by other testimony.

"Where it is sought to establish a trust by parol, in whole or in part, the trust must be clearly alleged in the bill, not only in terms but all the facts must be set out from which the trust is claimed to result. And the

facts in all cases must be proved with great clearness and certainty."

1 Per. on Tr., sec. 137.

"It is essential to the creation of a trust that there should be the *intention* of creating a trust, and therefore if upon a consideration of all the circumstances the Court is of the opinion that the settler did not mean to create a trust, the Court will not impute a trust where none in fact was contemplated."

1 Lew. on Tr., Marg., p. 82.

The Court below further held that while the corporation was an essential legal entity, its road and property were, as between the plaintiff and defendant, regarded as their individual property, owned as tenants in common according to their respective interests as represented by their stock.

That the appellant made and controlled the directory and conducted the business as if it had been his private business, except that the usual corporate forms were used for legal purposes and because they were a legal necessity.

That the construction contract of May 22, 1883, worked no change and was not intended to work any change in the previous relation of the parties; that the defendant, John D., was named as contractor, but in all that he did either before or after the making of this contract he was acting for himself and plaintiff according to their respective interests in the property (Rec., 267 and 8); and it decreed appellant a trustee for the appellee for a third interest in the stock and bonds earned under said contract.

These propositions involve questions of fact the determination of which will require a careful examination of the record and weighing of the evidence.

First. Assuming that the transaction between these parties amounted to an equitable transfer of the stock, what were their subsequent relations? The allegations of the

bill show with what care the corporate existence and organization was preserved throughout all the changes that were made in the construction and extension of the road, and how all contracts of importance were made by and with the corporation through its proper agents. It is safe to say that no important step was taken throughout the entire progress of the enterprise without the authority of the corporation or its duly authorized officer or agent. The examination of the record embodied in the statement, *supra*, will disclose these facts. So far, then, as the actual conduct and practice of the corporators may be resorted to to throw light on the relations existing between them, it would seem that they regarded it as something more than a mere fiction devoid of any practical powers or functions. It must be admitted that the corporation was in the power and control of the appellant; this necessarily resulted from the fact that he was the principal stockholder; but is that any reason for ignoring the corporate existence, denying its functions and legal ownership of the property, and overthrowing the relations existing between it and the stockholders, and the relations of the latter as among themselves? The law, in adjusting the rights growing out of this relation, universally recognizes the legal entity called the corporation as the owner of the property, and adjusts the rights and relations of the shareholders upon that basis, and the rule is not changed by reason of the fact that a majority or all of the stock is owned by one person.

Button *v.* Hoffman, 61 Wis., 20.
Van Allen *v.* The Assessors, 3 Wall., 584.

Second. Let us turn to the record now and see what evidence there is in support of the proposition that the plaintiff and defendant regarded and treated each other as tenants in common or joint owners of the property, or that appellee was interested in the construction contract.

The appellant in his answer denies all the allegations in the bill whereby it is sought to establish a joint interest between them, and says that it is not true that they ever consulted or acted together as joint owners of the property, or that he ever recognized the appellee as owning any interest either in the stock or property (Rec., 41); and in regard to the construction contract, he denies that appellee had any interest therein, or that he ever had any thought of associating the appellee with him therein, or that they ever had any conversation or understanding to that effect. He denies, also, that he was a trustee for the appellee in any of said transactions, or that he was ever recognized as such by the directors of said companies.

The appellee, after testifying as to the circumstances in connection with his alleged purchase and the delivery to him of the stock memorandum, proceeded to state:

"*Previous to January of the present year this memorandum has never since been talked of or referred to between us*, nor have I had any reason to feel or consider that he did not regard it as being in full force and effect, nor has he at any time since the delivery to me of the said memorandum, in January of 1882, and prior to the month of January, 1886, ever asked or demanded from me the payment of any money whatever on account of the payment of the $8,000 which he now claims to be due and wholly unpaid. When a directors' meeting was held he generally detailed to me what had been done, and in the same way when he returned from a trip to St. Louis or some other place where he had been on business for the company. He always talked over with me whatever he had accomplished by said trips. He told me he had withdrawn his name from the directory for the purpose of making a construction contract. He said he had made the contract in his own name for the reason that he could deal with outside parties more readily, and that he, being an alien, would have the right to carry any litigation that might arise into the Federal courts, which he considered a great advantage.

"He never intimated to me, nor did he consider, that

the construction contract would interfere with my rights or ownership in the road in any manner whatever. I was not present at the meeting of directors when the construction contract was entered into, to the best of my knowledge and belief. Relying implicitly upon his judgment, good faith, and integrity, I acted under his instructions and complied with his requests in all these matters, never for a moment fearing that he would or could take advantage of any of my said acts. At the time of the organization of the Arkansas and Indian Territory Railway and the Arkansas and Louisiana Railway he told me that he had put me down as owning 200 shares of the capital stock of each of the said companies, and himself as owning 400 shares in each of said companies. These and other circumstances of like nature served to lead me to believe that he was acting in good faith toward me at all times prior to January, 1886.

"During the period from January 1, 1882, until about January 1, 1885, I worked on the road in various capacities. I was recognized as assistant superintendent of the road, and no employé ever to my knowledge refused to obey my orders as such. During the spring of 1882 about three miles of the narrow-gauge road-bed was washed away, which stopped the running of trains for a period of about one month. I assisted to rebuild and relay the track on this three miles of road, and helped to rebuild all of the bridges upon it. Nearly all that summer I supplied the place of engineer on the narrow-gauge engine, taking on a new fireman and keeping him with me until he was able to run the engine. In the fall of 1882, I took charge of the broad-gauge engine which was then being used on construction, again taking on another fireman and learning him to run the engine. When not upon the engine I was continually upon the road, either as conductor or upon the construction work. I superintended the laying of nearly all the broad-gauge track between Hope and Washington, and much of that between Washington and Nashville. On several occasions I have been out upon the road from twelve o'clock noon until after daylight the next morning, working incessantly without food all that time. On two of these occasions I suffered intensely from the bitterness and inclemency of the

weather. On many other occasions I have worked nights and long hours. I never asked or received any compensation for any night work or over time. The reason that I did not demand pay for night work or extra time was because I considered that I was working and improving my own property, and had I owned it entirely by myself I could not have worked harder or taken a greater interest in it."

We might pause here and insist that the appellee upon whom the burden of proof rests has failed to make out his case, in that he has not pointed out any agreement or understanding as between himself and the appellant which would have the effect of changing the relations which the law implies between stockholders. His testimony is of a negative character. It is entitled to very little weight at the hands of the Court on account of the vagueness and generality of his statements. There is no specific fact or act which the Court or counsel can lay hold of to establish a joint interest or a trust relation between the parties or to constitute the appellee a party to the construction contract.

The testimony of the appellant on these points was as follows (Rec., 127, *et seq.*) :

"He had, I think, never been on any railroad until he came here, and never had anything to do with a locomotive until he came on this road. Without being, as he claims, either a good machinist or a good locomotive engineer, he is a very ingenious man and has rendered efficient service. I have always regarded him as a man of good judgment, and I have consulted him a good deal in regard to rolling stock and track and work on it. I have not consulted him generally in regard to operating the road; not nearly so much as I have Mr. W. H. Carruth or Mr. Wheless, the auditor. I have never consulted him as a tenant in common with me, and have never so regarded him. At the time the construction contract was made with the Arkansas and Louisiana Railway, in May, 1883, it was prepared in my office and

lay on my desk several days. He read it in my presence and said he would like to take it home and read it over again. I told him to do so. He returned it next day, I think, and said he thought it was a good contract. If he was a party to this contract or if I acted as a trustee for him in it I did it without any knowledge or suspicion of what I was doing. I supposed at the time I was making it in my own behalf. I told him I would not go into the directory in 1883 and told him my reason, which was that I understood that as a director I could not legally contract or be interested in any contract for the construction of the road. I declined election as a director and gave the same reason at a meeting of the stockholders when Mr. Paul Beardsley was present. To the best of my knowledge and belief, Mr. Paul Beardsley has never contributed one dollar to or into either the Washington and Hope Railway, the Arkansas and Indian Territory Railway, or the Arkansas and Louisiana Railway. He was always on a salary and he always drew his salary, and so far as I ever heard, made no protest or objection. He subscribed for stock in the Arkansas and Indian Territory Railway Company, and also for stock in the Arkansas and Louisiana Railway, but he has never paid a cent on his subscription nor taken any steps to obtain this stock, and the only stock that has ever been in his name is that before referred to, which was a few shares of what was issued to me in the exchange for my stock in the Washington and Hope Railway, which stock was put in his name by my order to qualify him as a director, but has never been delivered to h m and he has never paid a cent on account of it, and never asserted any right to it previous to February, 1886.

Q. Up to the time of the sale of the Washington and Hope Railway and the transfer of that stock had Mr. Paul Beardsley paid you the $8,000 or any part of it on account of the purchase?

A. He had not paid a cent up to that time, nor has he at any time ever paid or offered to pay me a cent on account of it.

Q. What reason has he given for not paying you?

A. He has never given any reason. From the 1st day of January, 1882, when I gave him the memorandum he exhibits, he never spoke to me again about the transac-

tion until some time in February, 1886, when I first spoke to him about it.

Q. Do you mean to say that from the time you gave him this memorandum, on January 1, 1882, the transaction was not again mentioned or referred to between you for more than four years?

A. Yes; that is what I say.

Q. Was there during that time any understanding between you that he had an interest in the property?

A. Never at any time.

Q. Was there at any time during those four years any conversation between you in regard to his having an interest in the road?

A. Never at any time.

Q. Were your relations to each other friendly—confidential?

A. I think they were more—they were brotherly. I do not remember that we ever had an unpleasant word. I had nothing kept from his knowledge in connection with the road or its management.

Q. Did you not think it strange that in all these four years and more he never offered to pay you anything on account of the purchase nor even mentioned it to you?

A. No; with the understanding I had of the transaction I did not think it very strange.

Q. Will you explain that?

A. I regarded the transaction as a conditional sale of so much stock to be delivered and the title to pass only when paid for. As he had given me no contract, I did not consider that I could compel him to take the stock and pay for it, even if he had the money. I did not even have a copy of the memorandum which he held. The earnings of the Washington and Hope railway were so small and the outlook so unfavorable afterwards that if he had got the money he expected he probably would not have been willing to have paid for the stock and taken it. As I heard no more about the mine, I concluded that it was probably worthless and could not be sold. When he did not again refer to the matter for some months I thought the sale was off.

Q. You said the matter was not again referred to between you until you spoke to him about it. Where and when was that, and what did you say to him?

A. It was at Nashville, Ark. It was in February, 1886, after he had asserted this claim. I told him at that time that he could have the stock even now, if he would pay for it.

Q. What stock did you mean?

A. I meant the $33,250 face value of stock that I had agreed to sell him in 1881.

Q. What reply did he make to you?

A. He said he did not owe me a cent for the stock, or that he would not have to pay me a cent for it, or words to that effect.

Q. At what time was the construction contract between you and the Arkansas and Louisiana Railway Company ratified?

A. On May 20, 1883, I think.

Q. Had the permanent organization of the company been effected previously?

A. Yes; permanent organization was effected.

Q. Who were the officers and directors who were elected at the permanent organization?

A. W. H. Carruth was president, R. B. Williams was secretary. These, with A. B. Williams, H. B. Holman, Thos. Simms, Paul F. Beardsley, W. P. Hart, J. K. Jones, and J. D. Conway, constituted the board of directors.

Q. Were you not a director then?

A. No; I understood that as a director I could not legally contract for nor be interested in a contract for construction with the company. At the election of the permanent directors it was proposed to elect me, but I declined, stating to the meeting that I desired to contract for the construction of the road, and that I was advised that as a director I was prohibited from being interested in any construction contract.

Q. Was Paul Beardsley elected a director then, and was he present when you made this statement?

A. He was elected a director at that meeting. He was present and heard what I said in reference to the contract. I had, however, previously told him that I could not be a director, and why.

Q. Had you told Paul Beardsley then that you were going to take a contract for the construction of the road?

A. Yes; I had told him just how I intended to proceed. I had explained my intentions quite as fully to

other parties, perhaps to A. B. Williams, to W. H. Carruth, and, I think, to R. B. Williams and others.

Q. In your conversation with Paul Beardsley previous to making the construction contract, when talking of it, did he show by any expression or act that he understood that he was interested in it, or that he claimed any interest in it or any ownership in the road?

A. I cannot remember any single act that he did or anything that he said that gave me any suspicion of any such claim or intention. I had not probably forgotten my agreement to sell him the stock, but at the time it was made I regarded it purely as a stock transaction. As I understood it, if he had paid me for the stock and taken it he would have owned just the $33,250 of stock, and no more, unless he had by some way acquired additional stock by additional purchase or for value received. It was not my understanding at the time I agreed to sell him the stock, nor has it been at any time since, that I could compel him to take the stock and pay the eight thousand dollars and interest, even if he had the money. I kept no copy of the memorandum, and if I had a copy, or the original, it was not binding upon him, he not having signed it. Owing to the length of time that had passed without reference to it, I suppose it had been abandoned long before.

Q. In making that contract, did you intend to include him as a party, or did you make it in good faith as between you personally and the company?

A. I made the contract in perfect good faith with the company, acting for myself only, and without any thought of his having any interest, either legally or morally. If I had intended to include him in the contract, I would have made him a party to it and had him withdraw from the directory. Every member of the directory was, as I think, a personal friend of mine, and also of his. I was on intimate and confidential terms with all of them, and so was he, as I think. If he intended to be included in the contract, or thought he had an interest in it, or if I had intended that he should be a party in interest, there was no reason whatever for any concealment and collusion, or for misleading the other directors, or for doing what we both knew was contrary to law. His withdrawal from the directory would have left a greater number of directors than the law required.

Q. Is there any connection between this contract and the stock you acquired under it and the stock you previously held in the company?

A. None whatever.

Q. If Paul Beardsley had proposed it when you were about to make your construction contract with the Arkansas and Louisiana Railway Company would you have associated him with you as a party to it?

A. No; I would not.

Q. Why not?

A. A good and sufficient reason would have been that he was unable to contribute anything towards carrying it out. There was, however, a stronger reason with me. I would not have gone into any arrangement that would have resulted in a partnership with him.

Q. Would not the same reasons have prevented you from selling him such an interest, one-third, as he claims you did sell him when you agreed to sell him the stock in the Washington railway?

A. Yes; I would not then or at any time have sold him such an interest as would have created a partnership. I simply agreed to sell him $33,250 in stock.

Q. Had you done business as a partner—that is, in partnership—before?

A. Yes; I have done business in a partnership several times. I once did business in partnership with Mr. Paul Beardsley. The closing up of that business, however, was so unsatisfactory to me that I would not at any time since have been willing to have gone into a partnership with him.

Q. Have you read the statements of Mr. Paul Beardsley made in his deposition as to the conversations between you and he prior to your written agreement to sell him the stock as to the interest he was to acquire by his purchase and the manner in which you were to be paid? If so, state whether his recollection is correct.

A. I have heard his statements read. He is mistaken. I am able to be positive for two reasons. While I was sincerely desirous to assist Mr. Paul Beardsley financially, if I should be able, I had not forgotten the difficulty which had arisen from our previous partnership. I would not then nor at any time since voluntarily have made a partnership with him, and I never intended this sale to

be anything other than a stock transaction. This was in my mind also when I made the memorandum he exhibits. In regard to the payment, he told me he had a valuable mine with valuable machinery in it. He told me there was a small incumbrance on it, perhaps $1,000, in favor of a Mr. Drexler, who had been a former partner of his. I never heard of the note or claim he speaks of until a good while later. My understanding was that this claim was $1,000 or $1,200. It would not, therefore, have paid for the stock. In a suit to recover this claim afterwards, he was defeated.

We will now show what the understanding of the officers and employés of the company was as to the relations of the parties to one another, and to the property based on their course of dealing and conduct during the period of four years.

W. H. CARRUTH, who was a director and the president of the company, testified at pages 95 and 96 of the record that he knew of no other interest in the construction contract than that of J. D. Beardsley and that he voted for it as chairman and director, so understanding it. That if there were other interests in the road than that of J. D. Beardsley he did not know of them.

R. B. WILLIAMS, a director and secretary, testifies at page 227 that he knew of no one except J. D. Beardsley and the Arkansas & Louisiana Railway Company being interested in the contract. Had been on very intimate terms with J. D. Beardsley and on friendly terms with the plaintiff. Never heard either of them state that the plaintiff had an interest in the road or construction contract until about the first of February 1886.

HENRY B. HOLMAN who was the president of the Arkansas and Indian Territory Railway and a director of all three of the companies during the whole of the time covered by these transactions, testified at pages 105 and 106, he was present at the meeting at which an election of directors was held and the construction contract of

May 22, 1883, was ratified by the stockholders. That J. D. Beardsley declined to be elected as a director and gave as his reason that he contemplated making the construction contract and that the law prohibited him from being interested in any such contract if he should be a director. That it was unanimously ratified and was in the opinion of the witness the best contract that could have been made and the only way by which the company could have had the road extended. That the plaintiff was present at this meeting as a director and voted for the ratification of the contract.

"I had no suspicion then nor do I believe now that Mr. Paul Beardsley had any interest whatever in this contract. All the directors were personal friends of Mr. Paul Beardsley as well as Mr. J. D. Beardsley." It was understood that no director could be legally interested in the contract. There was no necessity for Mr. Paul Beardsley to have concealed his interest in the contract, if he had had any, as the directors would, I think, have been just as willing to contract with Paul F. Beardsley and J. D. Beardsley as with J. D. Beardsley alone. I have been personally very intimate with both parties ever since they first came to Washington; have never heard anything from either of them that led me to suspect in the least that J. D. Beardsley did not own the road absolutely except the stock held by the directors, or that Paul Beardsley had any interest whatever in it. I know that he subscribed for some stock in the Arkansas & Indian Territory and Arkansas & Louisiana Railway Companies, but to the best of my knowledge he never paid anything on account of the subscriptions, and none of the stock which he subscribed for was ever issued to him.

W. H. Wheless, the auditor, testified as follows at pages 206, 207:

I understood Paul Beardsley to be an employé of the road. I never knew of any interest he had. When I

was first connected with the road, from the fact that he was Major Beardsley's brother, I may have speculated upon his having some interest in the road, but, not being able to see how such interest could exist without my knowledge, I was forced to the conclusion that he was only an employé. This conclusion was strengthened as my connection with the road became more intimate. I noticed that during Major Beardsley's absence matters of importance were laid over generally until his return. This was specially the case in making special rates. I noticed this more than anything else that came to my knowledge. When Major Beardsley was at home he managed things entirely, as far as I was able to see.

Q. Were your relations during that time with Major Beardsley intimate?

A. They were very intimate and confidential. They were necessarily so from my position.

Q. Did he talk freely to you in regard to his interest in the road and the business generally?

A. Very freely, indeed.

Q. Did you ever, during that time, hear any expression from him indicating that Paul F. Beardsley sustained any other relation to the road than that of an employé?

A. I did not.

Q. What did the action and conduct of Major Beardsley, during that time, indicate the relation of Paul Beardsley to be?

A. That of an employé.

Q. Referring to the entire course of conduct of Major Beardsley and Paul Beardsley, both in relation to the road and the management, during the time of your connection with the road, was that conduct consistent or inconsistent with the proposition that they were joint owners of the road?

A. I would say it was inconsistent.

All these witnesses except Holman were introduced by the appellee and made the foregoing statements on their cross-examination, all of them were intimately associated or acquainted with one or both of the parties and held positions which gave them superior opportunities of knowing their relations and interests in the Company. The bill al-

leged that they, the directors, understood and recognized that appellant was the *active agent and trustee* of appellee in these matters, and not one of them it seems, from their testimony, had any idea or *suspicion*, to use the language of some of the witnesses, of such a condition of affairs.

It would have been simply impossible for the relation alleged to have grown out of a course of dealing between the parties without the knowledge of these witnesses. Their relations were too intimate and they were too closely connected with the affairs of the corporation and of the parties for such a thing to have occurred. Nor is this all; appellee, in a conversation with R. B. Williams, after he had begun the assertion of his claims in this case, stated that he expected J. D. Beardsley had forgotten giving him the memorandum of sale. This testimony was not attempted to be controverted; indeed, the standing of Mr. Williams in the Company and in the community was such that the appellee could not afford to contradict his statement. How, we ask, can this statement be reconciled with the assertion that the appellant was during all this period of time recognizing and treating the appellee as a tenant in common with him of the property, on the basis of a contract alleged to have been evidenced by said memorandum? The two propositions are utterly inconsistent. The statement to Mr. Williams was made before the litigation was begun, and the appellee fully advised as to the ground upon which he would base his claim. It corroborates and sustains the statement made by the appellant that he regarded the whole matter as having been abandoned, and is consistent with the conduct and relations of the parties, as shown by the testimony of the officers of the Company and of the employés, as we will presently show.

Another circumstance which lends strength and significance to the statement of Mr. Carruth, the President of the Company, is the fact that shortly after the agree-

ment was made the appellant told him of it. He states at page 92 of the record, that soon after the memorandum of sale was given by the appellant to appellee the appellant told him of it and that he had sold him a third interest in $100,000 worth of stock, subject to the payment of $8,000. Knowing this fact it would have been natural for this witness to have observed anything in the conduct of the parties indicating a joint ownership of the property or an interest of the appellee in the construction contract.

We will now call the attention of the Court to the testimony of the employés who were engaged in the active operations of the road and whose opportunities for knowing whether the appellee was acting, and recognized as a joint owner and tenant in common of the property were only second to those of the officers of the company.

Edgar Holman (Rec., 96, 97) who was a conductor for about two years and a half of the time covered by this transaction, testified, that he and the appellee both lived at Nashville, Ark. Appellee was assistant superintendent of the road. His understanding had always been that he was an employé of the road and on a salary just as witness was. Everything connected with the business of the road seemed to justify this view. He was as much subject to the orders of J. D. Beardsley as witness was, though he had greater authority. Appellee always seemed to witness to have a reasonably easy job. When there was a wreck or trouble on the road he went out with a party and helped to get everything started, but witness and everyone did the same.

R. H. Bomar (Rec., 99) a locomotive engineer employed on the road and in car shops at Nashville, Arkansas, during this time, testified, he always understood that appellee was an employé and worked for a salary, and that it was universally understood by all the employés that

J. D. Beardsley owned the road; this understanding was so general that I do not think any employés had any doubt of it.

WILLIAM BOMAR, also a locomotive engineer during the same time, and who ran on a construction train, stated (Rec., 100) that appellee was assistant superintendent of the road, that J. D. Beardsley was in control of the road, and witness always understood that he was the owner of it. That appellee's duties and performance when out on the road were about what would be expected from a general foreman of construction. He overlooked the work and gave occasional directions to foremen.

J. M. SIMMS (Rec., 102), a merchant at Washington Ark., and who was a conductor on the road after its completion from Washington to Hope, testified that the appellee came to the road about the first of November, 1881. Witness' understanding was that he went to work as an employé and he had never had any reason to suppose that appellee then, or at any subsequent time, had occupied any other position to the road and its property than as an employé. Had been personally acquainted and quite intimate with both the parties since they first came to Washington; had never heard the slightest intimation from either of them that appellee owned an interest in the road; appellee had told witness more than once that appellant owned the road, and had made this statement to him within six months before the time at which his testimony was taken.

JOHN H. BURT testified (Rec., 103) that he was employed as depot agent at Washington, in the year 1880, until November, 1884. That all the business of the road went through that depot. That during the whole of his connection with the road he always understood that J. D. Beardsley was the absolute owner of it. Never heard

this questioned either by the appellee or anyone else, nor, from what witness saw and knew about the affairs of the road, was anything calculated to make a different impression upon him. That appellee came to Washington in the latter part of the year 1881 and went to work on the road as an employé, and if he ever was connected with the road at any time otherwise than as an employé witness did not know it or have any reason to suspect it.

JESSE CARROWAY was employed as section foreman. He testified (Rec., 107) that appellee's duties seemed to me to be about what any division superintendent would have performed; witness always observed that his authority was limited, and in any important matter he referred to J. D. Beardsley; witness never had any suspicion that Paul Beardsley was anything more than an employé like himself; all his observation during the three years that he worked on the road went to confirm his original understanding that J. D. Beardsley owned the road and that Paul Beardsley was an employé on a salary.

J. W. TEETERS, who was foreman of track laying and bridge building, testified (Rec. 255, 256) that during the time he worked for the road he worked with Paul F. Beardsley; his impression was that he was an employé the same as himself. He based his impression upon the fact that appellee had a salary paid to him every month and was subject to orders the same as other employés; witness never noticed any difference in his treatment so far as his sphere went from that accorded to other employés; he knew nothing as to the rights or interests of either party during the four or five years he worked on the road. He never heard of Paul Beardsley having any interest.

EDWARD ALEXANDER, a lumber dealer in the neighborhood, who furnished the road with a large amount of lumber and ties, testified (Rec., 256, 257) that appellee

told him, in discussing a difference which arose between them growing out of an inspection by appellee of ties sold by witness to the company that he was an employee working on a salary and had no interest whatever in the matter and no discretion but to obey orders. And on another occasion in settling an account between them appellee told him that it was no interest to him; that he had no personal interest at all but only desired to do what was right between J. D. Beardsley and the witness. That all witness had observed in connection with his association with the parties in his extended business with the road satisfied him that the appellee did not pretend to any property interest in the road.

R. A. Hayes, the General Manager of the St. Louis Iron Mountain & Southern Railway, testified (Rec., 250) that he did not know of or recognize, or deal in any way with appellee in the furnishing of material for the extension of the road and that appellee was not, so far as he knew, a party to the construction contract. In opposition to this mass of testimony furnished by the appellee himself, and all parties connected with the road he produced the testimony of three men in no way connected with the road, who testified that appellant told them in 1882 or 1883 that he had given or let the appellee have one-third interest in the road. (See the testimony of Yowell, Rector and Bell, Rec., 110, 112, 113.) This alleged conversation occurred not a great while after the delivery of the memorandum of sale, and it may be possible that appellant made the statements to which they testify, referring to the memorandum. Yowell says he heard this conversation and that it occurred in the summer or fall of 1883. Bell fixes the conversation to which he refers in September, 1882. It is a little remarkable that the appellant, and the appellee as well, should have kept silent in regard to this transaction with those who were associated with them in the road and who were their

intimates in social life, and that appellant should at the same time have communicated it to parties toward whom he sustained the relation which existed between him and these witnesses, for he testified (Rec., 152) in answer to the question:—"Have you heard the deposition of George Rector, J. G. Yowell and John Bell in reference to your having told them that Paul Beardsley had an interest; that you had sold him or given him an interest," etc.?—

"Yes, I have heard these depositions. I was never on intimate terms with either of these men. I have no memory of ever referring to anything of the kind in any conversation ever had. If any reference was ever made to anything of the kind it was some reference to my agreement to sell in 1881. Messrs. Rector and Yowell are partners in business. All three of these men are personal enemies of mine, and have been so for over two years."

The appellee attempted to prove the allegations of his bill by W. P. Hart, one of the directors of the company. Hart stated (Rec., 108) that it had been his belief and understanding that appellee owned an interest in the stock and property of the road. He said, further, that he was unable to state why or how he formed this belief, except that it be from his observation of the interest the appellee took in the business and operations of the road, and the fact that appellant consulted with him in matters pertaining thereto, and the authority he exercised over the trains, property, and employés of the company. On cross-examination he stated he got his impression about the respective interests of the parties at the time of the transactions and sales and purchases, and was informed that the same had been confirmed by the books of the company, but that this was only hearsay. That the first positive and conclusive information he had that appellee had an interest in the road was after the commencement of this suit. He states further: "I have

until after the commencement of this suit recognized Maj. J. D. Beardsley, since his connection with the road, subject to certain conditions entered into by the citizens of Arkansas for the completion of the same, *as the sole owner thereof*, and this impression was the result of the fact that the dealings were between Maj. J. D. Beardsley and the directory, and that his was the only name known in the transaction."

The only portion of this testimony which is competent is the latter clause included in the quotation marks. It is material because it contradicts the allegations of the bill that the directory recognized the appellee as owning an interest in the road; the rest of it is a mere matter of belief based on hearsay and is clearly incompetent. The record at page 109 contains appellant's objection to its competency on the ground that the statements are made from hearsay; they are the very rankest of hearsay. 1 Green. Ev., sec. 124 (14th ed.).

We will now show over the appellee's own signature and as late as February 1, 1886, that the allegation in the complaint and the claim made in his deposition that there was a clear and perfect understanding between himself and appellant as to their respective interests in the property, and that they were working together in full accord upon the basis of a joint ownership as tenants in common of the property, is untrue. In a letter written to the appellant on the date mentioned and exhibited in the record as Exhibit G (Rec., 167) he says:

"In relation to our business affairs according to my understanding my interest in the road or company is exactly one-half of what yours is. *If this corresponds with yours* I will be glad if you will give Judge Williams such data and instruction as will enable him to draw up such an instrument as will be necessary and proper under the circumstances to establish and set forth our respective interests in such a way that should accident befall either of us there could be no misunderstanding. Before doing

this, however, I think it would be well for you to make this the subject of a letter to me, so that we may agree on the principal points of such an instrument before having it written out so as to avoid any unnecessary rewriting."

And at the conclusion of a letter dated January 16, 1886, Exhibit F (Rec., 163) he says:

"I think * * * it would be well for us to have *a more definite understanding* as to our business relations and standing in the road. I would suggest that at some time in the near future, when you have the time to spare, we take this matter up and arrange it."

What need was there for these further understandings if the relations of the parties were at the time and prior thereto had been such as is claimed by the appellee in the pleading and evidence in this case, and why does he entertain the doubt which his letters imply as to the correspondence of their views on the subject? It was about this time that the appellee told Mr. Williams that he feared appellant had forgotten his having given him the memorandum. Appellant testifies (Rec., 125) that the letter of February 1st was the first information he ever had of appellee's claim to an interest in the road.

We will now refer to the letters of the appellant, Exhibits B, C, and D, to appellee's deposition (Rec., 86 and 87). It will be remembered that appellant testifies that appellee, before he went to New York in the fall of 1881, volunteered to endeavor to raise means while there for the appellant, to enable him to improve and extend the Washington and Hope Railway, and while appellee was in New York he received a letter from him asking for information in regard to the road and a description of the country, which he sent him (Rec., 122). It was from this that the correspondence originated. The letter of October 8th, Exhibit B, is singularly mutilated; the first three lines and one word of the fourth line, and the

last ten lines and about two-thirds of the eleventh line, from the bottom are all that is produced of that letter. The rest was evidently cut out. The appellee in explanation of the mutilation says he supposes his children did it in cutting paper dolls, but does not know. The attention of the appellant having been called to these letters while he was on the stand, he made the following statement in regard to them, to which we call the attention of the Court. (Rec., 151–2):

"I have read over carefully the letters attached to plaintiff's deposition, and I don't find anything there that tends to make me think my memory is at fault in the statements here made. When he was going to New York he stated that he had no doubt that he could obtain all the money that would be needed for extension. I told him I would be glad if he could. While he was there several letters passed in reference to getting money there, which he represented he was negotiating for. Soon after that I received a letter from him saying he could not accomplish anything in connection with his business in New York, and asking me to give him a place on the road. I wrote him a general reply to this letter, and in it I told him that our earnings were so small that I did not feel that we could afford to employ him, and told him I thought he could do better in New York. To this letter he replied that he could not do anything at present in New York; that he had his family on his hands; that he thought he could be worth $75 per month, and urged me to employ him at that price. My letter of October 24th, which he exhibits, was my reply to this. It is very apparent that the term 'we,' as used in these letters in reference to the extension and future operations of the road, could not in any sense have applied to him, as he had at that time not bargained to purchase, and one-half of the stock was then owned by Mr. Alderman. I have no memory of what was in his letter that mine of October 24, 1881, was a reply to, which led to the remark about the purchase of Mr. Alderman's stock. In writing letters and in speaking of business I habitually use the word we instead of I. Both Mr. Wheless, our auditor, and Mr.

Carruth, our treasurer, could establish from my letters to them a stronger basis upon which to claim a community of interest than is shown by these letters of 1881. It is my conviction from an examination of the mutilated letter of October 8, 1881, exhibited by the plaintiff, that it is the last letter I wrote to him in New York before that of October 24, 1881. In this letter of October 8, 1881, as I think, I declined to employ him on the road for the reasons before given. I think that part of the letter which is missing contained my advice to him that we could not employ him and the reasons therefor. Referring to the letter of February 7, 1886, I notice that in writing that I fell into some inaccuracies as to dates and amounts. The matter had not then been recalled to my mind for years. I wrote with no suspicion of what has happened since, and did not stop to get data or to think carefully. I was in error in saying that Mr. Alderman began to offer me his stock subsequent to Mr. Paul Beardsley's arrival, when, in point of fact, he began to offer it eight or ten months before. I was wrong in consequence as to the time of my purchase of the stock and of my agreement to sell the plaintiff. I was led to use the term "two-thirds of the purchase from Mr. Alderman" from his use of the same form in his letter to which this was a reply, and also from a general memory that the stock bargained to him was about two-thirds bought of Mr. Alderman. I was led in the same way to put the amount $33,333.33 in stock from overlooking at the moment of writing that I had not held the whole $100,000, and remembering in a general way that the amount I had agreed to sell him was about one-third of what I held at the time."

In this connection we will call attention to the relation sustained by the appellant and the appellee, respectively, to the Arkansas and Louisiana Railway Company at the time the construction contract was entered into: They were both members of the board of directors, and had been since the organization of the company. Occupying that relation, they were not in an attitude that they could, with legal propriety, contract with the company.

The appellant and the members of the board, includ-

ing the appellee, recognizing this disability of a director, he first resigned, and they accepted his resignation, in order to qualify him to enter into the contract. Now, we do not contend, that if the appellee and the directors had entered into the contract with their eyes open, and the transaction had been free from fraud and collusion, it would be necessarily void. Such contracts are voidable, and are often upheld by the Courts where the contract is fair and the circumstances warrant it.

Thomas *v.* Brownville, &c., 109 U. S., 524.

But if it was the intention and understanding between the appellant and the appellee, that the latter was to be a party in interest to the contract, the concealment of that fact was a deception and fraud on the remaining directors. And the deception was greater by reason of the appellant's resigning. If they deemed it necessary to take this course as to the appellant, why should they have concealed the facts as to the appellee's interest. Holman testifies that they would as readily have contracted with both of them as with the one. There was, therefore, no necessity for concealment, and it is not reasonable to assume that such a state of facts would have been kept secret. While the fact that appellee was a director may not be sufficient to warrant the Court in declaring the contract void as to him, it is certainly a very pregnant circumstance, in connection with other facts, to warrant the conclusion that he was not a party to, and had no interest in, the contract, and that his present pretensions are an afterthought, conceived for the purpose of participating in its benefits since it has turned out to have been successful.

We have endeavored, at the risk of being prolix and tedious, to set out all the evidence which we think has a bearing or will throw any light on the alleged trust relation, so far as the same may have sprung from the acts

and dealings of the parties, or the relations sustained by them respectively to the property, and we confidently submit that the testimony not only fails to establish a trust, but that it completely refutes the claim made in that respect, in so far as it is based on the acts and dealings of the parties, or any recognized relation between them.

Third. If the contract amounted to a completed sale of the amount of stock mentioned, and vested an equitable title thereto in the appellee, the trust thereby created was not enlarged so as to embrace all future acquisition of stock by the appellant. Whatever accrued from and came into the possession of the appellant, by way of dividends or earnings of said stock, would be treated as a part of the trust, but the position of the appellee as the equitable owner of the stock did not entitle him to any accretions that would not have accrued to him from the stock had he held the legal title. As the equitable owner the law simply protects him by securing to him all the rights that would be incidental to the legal ownership. He is not entitled to, nor will the law award him more.

The equitable rights of the *cestui que trust* will coincide with what would be his legal rights if he held the legal title to the stock.

It is not pretended that the appellant obtained the construction contract through any abuse of his alleged trust or undue influence, or that the contract was unfair, or the price paid for the work excessive.

The legality and propriety of appellant's proceedings is not questioned; on the contrary the appellee pretends that he was a party to the contract, and the only complaint he makes in regard to it is that he is not allowed to participate in its advantages. He, as well as all the directors, had full knowledge of all that was done. He is not therefore in a position to claim anything as a stock-

holder on account of any advantages secured to the appellant under the contract.

Van Cott *v.* Van Brunt, 82 N. Y., 540.
Mor. Corp., sec. 290.

But it was contended by the appellee's counsel and held by the Court below that the road was extended to Nashville by the use of its earnings and by borrowing on its credit, and that appellee was for that reason entitled to participate in its benefits. It is not true that the earnings were used for that purpose, from the simple fact that the road produced no net earnings to be used. The president, Carruth, testified that at the time the construction account was opened the company had no funds, and that the earnings did not contribute to the extension of the road to Nashville (Rec., 218), and the appellant testified to the same effect (Rec., 137 and 138). It is to some extent true that the funds used in extending the road were procured by the appellant upon the credit of the property, combined with his personal exertions and the confidence reposed in him. The money was secured through an arrangement between the appellant and Mr. R. S. Hays, the vice-president of the St. Louis, Iron Mountain and Southern Railway. Mr. Hays first agreed to furnish the means to change the track and widen the gauge. This was in the summer of 1882. The transaction was had with the appellant personally, Mr. Hays declining to enter into a contract with the Washington and Hope Railway Company, and stating to the appellant that he preferred to deal with him in the matter. Under this arrangement the gauge was changed and the track relaid with a better quality of iron. Later, some time in the fall of the same year, appellant made arrangements with the same party to secure means for the extension of the road to Nashville. The work of changing the gauge began in the fall after the transfer made by the Washington and Hope Railway to the Arkansas and

Indian Territory Railway. This work was done by the appellant with the means obtained from Mr. Hays in the manner aforesaid under an agreement with the Arkansas and Indian Territory Railway. At the time the construction contract was made that company was indebted to appellant for said work. The agreement and the indebtedness of the Arkansas and Indian Territory Railway to the appellant thereunder are recited in the construction contract copied in the statement and provision is therein made for paying appellant for said work. (See also deposition of J. D. Beardsley, Rec., 139 and 140.)

Shortly after the construction contract was entered ~~supra,~~ into, the appellant, pursuant to an arrangement with Mr. Hays, transferred a half interest therein to George C. Smith, as the representative of the St. Louis, Iron Mountain and Southern Railway, and he explains in his deposition that it was in contemplation of this assignment that the contract was made with himself *and his associates*, and in pursuance of the same arrangement one-half of the stock was indorsed in blank and deposited with the said Smith. In 1885, and after the road had been completed to Nashville, the foregoing arrangement was changed and the stock and bonds issued to the appellant under the construction contract hypothecated with the St. Louis, Iron Mountain and Southern Railway to secure it for the money and material used in the extension of the road. (See contract between J. D. Beardsley and the St. Louis, Iron Mountain and Southern Railway, Exhibit A, Rec., 157.) The Arkansas and Louisiana Railway was made a party to said contract. Appellant states it was considered necessary that the company should be a party, because the security of the debt depended upon the compliance with the conditions stipulated in the contract that no more bonds should be certified by the company until the debt was paid, and to insure this it was made a party. (Rec., 146.) Mr. Hays was asked by the appellee's coun-

sel whether credit was given to the appellant on his individual responsibility or on the faith of the Arkansas and Louisiana Railway Company, and stated that in making the transactions the personal character of the appellant was necessarily partially relied on. (Rec., 254.) The appellee himself testified (Rec., 143), in regard to the extension, as follows:

Q. What understanding had the directors with you and what considerations influenced them to make the contract with you?

A. The contract sets forth exactly what was understood all around. The directors, with one exception, were very anxious to have more road built. I knew, and I think some of the directors knew, that the road could not sustain itself unless extended. I had made such arrangements with the Iron Mountain Railway as made me sure of my ability to extend the road as far as Nashville, in Howard county, as a standard gauge road. We believed that with this accomplished it would be possible to go on and build it across the State. The members of the directory were fully advised of my understanding with the Iron Mountain Company. I think they believed in my ability to build the road, and therefore contracted with me. I believe they would have contracted with any outside party on the same terms. I have no doubt that as between myself and an outside party I would have had the preference.

Q. Would you as a large stockholder have consented to such a contract with an outside party?

A. Yes; if I had not been able to build the road myself or seen a reasonable chance of being able to build it in the near future. I would have been glad to consent to such a contract with an outside party who would build it at once. The stock of the Washington and Hope Railway at that time was, in my opinion, of no value. The stock in the extended road could hardly fail to have some value.

While it may be true that the appellant could not have raised the means for the extension of the road without the assistance of the securities acquired under that con-

tract, it is equally true that the money could not have been raised outside of the personal exertions, credit and standing of the appellant himself. It was said by the Court in the case of Van Cott *v.* Van Brunt, *supra*, if the rule be once established that no agreement can be made to build railroads by the transfer of stocks or bonds to the contractor without rendering him liable for the par value thereof it would seriously interfere with the construction of enterprises of this description and would prevent the building of many railroads. This remark would apply with equal force to the proposition that a contractor could not use the stock and bonds, or any other security of the road, which he might be authorized to use as a basis of credit upon which to obtain the means for the performance of his contract. In by far the larger amount of railroad construction that has been done in this country the contractors have obtained the means used by them in constructing railroads in that way. It would be difficult to find an instance in which a railroad contractor has performed his contract with means obtained independent of the road and its securities. And no more reason can be shown for holding that the additions to the property should accrue to the stockholders of this company because of the fact that the securities, or the road itself if you please, assisted the contractor in obtaining credit, than in the many thousands of similar cases that are occurring every day all over the country.

The Circuit Court held on the authority of Colbrooke on Coll. Securities, 306, that the relation of pledgor and pledgee was created. The citation does not support the ruling. The author was treating of the relation between a stockbroker and his customer who makes advances and holds a power of sale in case of default on the part of the customer in repaying the advances.

This question was involved in the case of Kelly *v.* Up-

ton, *supra*, and the Court held that the relation of pledgor and pledgee was not created.

See the language of the Court in that case, *supra*. 34.

It was contended that certain lands which had been conveyed to the appellant, and a telephone line and appliances and contract with the Pan-Electric Telephone Company, held by and in the name of the appellant, belonged to the railroad company, and the Court decreed that the legal title and interest of the appellant in said property and contract be divested out of him and vested in the railroad company.

There was a credit to the appellant as contractor of $4,754.53, derived from the sale of old material, consisting of rails, spikes, locomotive, car, etc., and other personal property, which was claimed by and belonged to him; also $6,975.13, derived from the collection of notes made to the appellant by citizens of Washington under the provisions of the contract between him and the Washington and Hope Railway Company for the construction of that road, termed in the pleadings and evidence "bonus notes." These amounts were collected and used in buying material and paying for work on the road, and were entered to appellant's credit in his account as lessee and contractor. The appellee alleged in his bill that they belonged to the railway company, and should be charged to the appellant, and asked for an accounting. The allegation was by the answer denied, and appellant set out the facts under which he claimed to own said assets.

See the answer, Rec., 44 and 45.

An account was ordered, in which appellant was charged with the sum of $9,302.27, drawn by him against said credits, and one-third thereof was passed to the credit

of the appellee on the purchase-money for the stock, amounting, with interest, to $3,521.93.

See deposition of W. H. Wheless, Rec., 209 and 210, and Master's Report, 274.

First. We deny the right of the Court to adjudicate these questions at the suit of the appellee, in the absence of a strong showing that there was a necessity for the interposition of a stockholder for the purpose of protecting the rights of the company against the fraud and laches of its directors and officers in the preservation and protection of its rights, and of a demand in good faith and a refusal on the part of the directors to take the necessary steps for that purpose.

The case of Hawes *v.* Oakland, 104 U. S., 450, contains a clear and comprehensive statement of the rule requiring suits for the protection of property interest to be brought by and in the name of the corporation, and the cases in which the Court will depart from the rule and permit a stockholder to sue.

The conclusions of the Court are summed up, Rec., at p. 460 and 461, and we submit that the appellee has not shown any foundation for this proceeding and decree within the rules declared by the Court in that case. There is no allegation, nor was there any contention on the part of the appellee that there had been any fraud or misconduct on the part of the directors, either as among themselves, or in connection with the appellant, or that they were abusing their trust in a manner to warrant the Court in permitting the interference of a stockholder.

Appellee did not attempt to show that he had made any effort to obtain relief through the regularly constituted corporate authorities, nor is there anything in the record to indicate that the directors would have colluded with the appellant for the purpose of diverting the prop-

erty or means of the company from its proper channels, or had refused to take the necessary steps for the protection of his rights and interest in the property of the corporation.

Second. The property referred to did not belong to the company. The bonus notes were paid to the appellant under the contract for constructing the Washington and Hope Railway (see the fourth clause of that contract, *supra*), and belonged to him alone.

As between Alderman and defendant, the agreement was that Alderman should have half of the stock and, in consideration of that, he was to pay half the cost of construction. The testimony both of the defendant and of Alderman is clear and positive to this effect and is not disputed. And the testimony in regard to the terms of the sale from Alderman to Beardsley shows that only the stock was taken into consideration by either of them. The fact is that Alderman never set up any claim to the bonus notes or attempted to sell any interest in them either in his negotiations with Paramore or with the appellant. (See the testimony of J. D. Beardsley and Alderman, Rec., 130, 131, 259 and 260).

The old material was purchased by the appellant from the County Court of Shelby County, Tennessee, and paid for with his own means. Alderman did not contribute anything toward paying for the material; no settlement was had between them in regard to it, and appellant did not take it into consideration in his purchase from Alderman. He explains this transaction in his testimony, at pages 130 and 131 of the record; see also Alderman's deposition, page 260. He informed the appellee of the facts at the time of the agreement between them, and appellee understood that this material was reserved by appellant. (J. D. Beardsley's deposition, Rec., 133 and 148.) And in the construction contract of May 20, 1883, it was agreed that he was to have the material (*supra*).

Neither the railway company nor the appellee are parties to the contract with the telephone company and there is nothing in the record to show how the instruments and line were paid for. It is difficult under these circumstances to see how the appellee's contention in regard to that property can be maintained. The lands, some of them, were bought during the time of the original construction of the Washington and Hope Railway, and were paid for by appellant in part before the Washington and Hope Railway was completed and partly out of money obtained from the St. Louis, Iron Mountain and Southern Railway for construction purposes.

J. D. Beardsley's deposition, Rec. 153, 154.,

These funds belonged to the appellant. Neither the railway company nor the appellee had any interest in them, nor did they acquire an interest in the lands by said purchase. As to the lands which were donated for depot purposes at Nashville, the equitable title of the railway company is not disputed, nor has the appellant ever refused to recognize its interest. The property was donated for the purpose of a depot and town site, and the title was conveyed to appellant as a matter of convenience to facilitate the sale and transfer of lots when the property should be platted. The appellee did not distinguish between the several tracts of land in his bill so as to make it practicable, if it had been proper, for a decree to have been rendered as to any part of them.

Third. The appellee was not, in any event, entitled to the proceeds of the property and bonus notes which was applied to his credit on the purchase money for the stock, and we submit that the Court committed a gross error in ordering the account to be taken. If the appellant was chargeable with these funds they belonged to the railway company and not to the appellee, and should have gone into the treasury of the company. The rail-

way company was largely indebted and the appropriation of these assets for the personal benefit of the appellee was a fraud on the rights of its creditors. The alleged agreement that the net earnings of the road were to be applied to the payment of the purchase price of the stock did not alter the case. There were no net earnings. It required all the earnings of the road and more to pay current expenses and liabilities, and at the time these transactions occurred, the road was in an insolvent condition. The decree can only be sustained by entirely ignoring the existence, rights and duties of the corporation in its relations to its creditors, as well as its stockholders and officers. It was not only a violation of the principles of law, but was equally violative of the contract, taking appellee's version of it to be true.

The Court also decreed that so much of the construction contract as gave to appellant all the earnings of the company for five years should be set aside, leaving the contract in all other respects to remain in full force between the appellant and the railway company; but that all interest and, by consequence, all liability of the appellee in said contract should be extinguished and annulled. When it is remembered that no complaint was made as to the terms of the contract either by the appellee or by the railway company, nor any relief of that kind asked for by any party to the proceeding, the remarkable character of this decree will be apparent. The Court not only went outside of the record in annulling the contract altogether as to the appellee, and partially as to the appellant, but it did what the Courts are constantly disclaiming their power to do—that is, it made a new contract between the appellant and the railway company by extinguishing so much of the old contract as gave appellant the earnings of the road during the period mentioned, and leaving the residue of it in force.

As the appellee's case depends almost entirely upon

his own testimony, the question of what credit is to be given to it is a matter of great importance. We have already shown many instances in which his testimony is completely contradicted and overturned in material matters by the testimony of other and disinterested parties as well as by the incontrovertible facts in the case. But in order that his testimony may be properly estimated, we will now call attention to a number of statements and allegations made by him as within his own knowledge in which he is contradicted by all the evidence in the record which has a bearing on said matters. He alleges in his bill which is sworn to, that he and defendant worked together harmoniously and consulting in all matters pertaining to their railway enterprise without reserve, *and succeeded in completing a first-class, narrow gauge, all-iron railway between the towns of Washington and Hope*, and that they afterward concluded to change the gauge of the road and make it uniform with the gauge of the St. Louis, Iron Mountain and Southern Railway, etc. (Rec. 7). Now it is a fact beyond controversy that the road was completed and ironed a year or more before the appellee ever saw it; this is estabilised not only by the testimony of the appellant but by Mr. Carruth, the president and treasurer. (Rec., 282).

J. M. Sims, Rec., 102.
R. B. Williams, Rec., 224.

And the directors, by a resolution, declared the road completed, and received it as of the first day of January, 1881, and finally the appellee himself, when on the witness stand, testified that the road was completed with iron rails and rolling-stock running upon it when he came to it. (Rec., 80.) Appellee alleges in his bill that the bonus notes given by the citizens of Washington were a part of the assets of the Washington and Hope Railway Company. It is obvious, upon the reading of

the construction contract between that company and the appellant, either that this statement was made recklessly and without any information on the subject, or that it was made falsely, as there is no ground for misunderstanding or mistake in the matter. He alleges (Rec. 15) that the directors of all of the three companies recognized the appellant as a trustee, first for Alderman and then for himself. This statement was one of great importance, was made with full knowledge of all the facts, and is of such a nature that appellant cannot be assumed to have been laboring under any mistake, and yet it is denied by the answer, and contradicted by all the directors who testified in the case, as well as by the appellee. He testifies (Rec., 78, 79) that he never attended but one of the meetings of the directors, which was held to authorize the issuance of some bonds to the Iron Mountain Railway; was not present at the meeting of the stockholders when he was made a director, nor at the meeting of the directory when the construction contract was entered into; that appellant detailed to him all that had been done, and told him he had withdrawn his name from the directory for the purpose of making the construction contract, and had made the same in his own name, for the reason that he could deal with outside parties more readily, etc. All of this statement is contradicted by the appellant, and it is shown by other directors that he was present at these meetings at which he says he was not present.

Rec., 106, 107, and 142.

And the records of the meetings of the stockholders and directors show the same facts. (Rec., 51, 53, 56, and 63.) It is scarcely credible that the appellee could have forgotten these meetings, and especially the meeting of the directors of May 22, 1883, at which the construction contract was ratified, if he had at the time felt that he

was interested to the extent that he now claims. His circumstances and situation were not such that he would have been likely to have forgotten or overlooked a matter of so much importance to him. It follows, of course, that he was also mistaken when he said he obtained his information of that contract through the statements of the appellant. He having been present when the contract was made, it would have been unnecessary for the appellant to have informed him of what was done. He alleges in his bill (Rec., 11,) that no books or accounts were kept between himself and the appellant from the first of January, 1882, to the first of January, 1884. On page 104, of the record, John H. Burt, who was the station agent at Washington, testifies that books were kept and were checked over every month by the appellant, and that all money which appellee drew was charged to him in the books. Appellant also testifies (Rec., 124) that this is not true, and in his letter to the appellant, written January 16, 1886 (Rec., 164), appellee, speaking of matters which occurred in 1882, says, referring to the cost of certain articles enumerated, "which amount you charged me on the books at the depot after your return." He, appellee, also testified (Rec., 83) that he never saw any balance sheet from the books of the company, or any other statement made from said books, except the weekly or monthly statement of earnings, and if there was ever a balance sheet made from the books, he never knew it.

Appellant testified (Rec., 150) that he had shown appellee several of the balance sheets, and Wheless, the auditor, testified (Rec., 207) that appellee, on one occasion when he was looking over the balance sheet, called the attention of the witness to a credit of appellant's amounting to about $5,300 for material, and suggested that it was singular that appellant should take a credit on his own books. Appellee alleged (Rec., 8) that he was a good

locomotive engineer and machinist. Appellant stated in his testimony (Rec., 127) that he thought appellee had never been on any railroad until he came here, nor had anything to do with a locomotive. And R. H. Bomar and William Bomar, locomotive engineers, testified (Rec., 99 and 100) that he was not a competent or skillful engineer. He alleges in his bill and testifies that he superintended the entire construction and operating of the road, and nothing was done thereon without his supervision and control, and to his great physical strength and ability and to the vast amount of manual labor he has performed on the road; and makes the incredible declaration that there is scarcely a piece of timber, or bridge, or trestle, or cross-tie, or a piece of iron, whether of rail, or fish-plate, or spike, from Hope to Nashville (twenty-six miles), that has not been handled by him in some way or other (Rec., 8, 9, 85). The appellee evidently regarded this as an important feature of his case, and it was so treated by the Court. The merits of his claim were based largely on the services which he claimed to have rendered on the road.

We will now show what his co-employés had to say about the character and extent of his services.

Edgar Holman, a conductor, testified (Rec., 97) that he was conductor on the Arkansas and Louisiana Railway, and has been for two years and a half; that Paul Beardsley has during that time been acting as assistant superintendent of the road. He says: "When we had a wreck or trouble on the road he went out with a party and worked to clear the road and get everything started, but I did the same thing and so did the section men." He says further: "Mr. Paul Beardsley has never been in control of the operation or construction of the road since I have been on it, except when it was left temporarily in his charge in the absence of J. D. Beardsley. Mr. Paul

Beardsley always seemed to me to have a reasonably easy job."

J. M. SIMMS testified that he was employed as a conductor on the road from December, 1880, until December, 1881 (Rec. 102), and that he was again employed March, 1883. He says: "During the time I was in the employment of the road Mr. Paul Beardsley never was in control of the operation of it unless temporarily, when J. D. Beardsley was absent."

WM. BOMAR testifies (Rec. 100) that he worked as locomotive engineer on the road from April to December, 1884; during the most of the time he ran a construction train. Mr. Paul Beardsley was then assistant superintendent. He was frequently but not continuously on the work. Sometimes he was there all day, at other times part of the day, and some days not at all. I do not remember ever seeing him handle rails or ties. I have seen him putting on fish plates. He never pretended to work as a laborer. His duties and performances when out were about what I should expect from a general foreman of construction. He overlooked the work and gave occasional directions to the foremen or men. He says: "During the time I was on the road I never knew Mr. Paul Beardsley to be in charge or control of the road, except when left so for a time when J. D. Beardsley was absent."

RUFUS BOMAR testifies (Rec. 99) that he had been employed on the road since November, 1884. He says: "Mr. Paul Beardsley was employed at Nashville as assistant superintendent of the road. Mr. Paul Beardsley's duties while at Nashville were not what I would consider onerous. He did not do anything more than might have been expected from any division superintendent. He has never been in the control of the road since I have been at work on it, except when J. D. Beardsley

has been absent." He testifies also that the only wreck that had been on the road while he was there was in January, 1885, and that Mr. Paul Beardsley was on the train when it was derailed; he directed the witness to take him and the passengers to Nashville on the engine, and he remained at Nashville and sent the witness with section foreman and men to get the train on, which they did by working all night.

JESSE CAROWAY testifies (Rec. 106) that he is now (March, 1886) in the employment of the Arkansas and Louisiana Railway as section foreman, and that he has worked continuously for the road since January, 1883; that Mr. Paul Beardsley was there as assistant superintendent when he came on the road, and remained so until about the middle of last month (February, 1886); that he worked on the track laying continuously for seven miles; Mr. Teeters was in charge of the tracklaying. Mr. Paul Beardsley came to the work a good deal but was not there continuously. When Mr. Paul Beardsley was on the construction work I never saw him work with his hands as a laborer; he stood around the work, overlooked it, and sometimes gave orders to the men as foreman. I never saw him handling rails nor assisting to handle them. I have seen him pick up fish plates and hand them to the men who were bolting them on the rail, and I have seen him occasionally putting in the bolts. I think I once saw him help handle a few for a few moments when we were short of men. His duties seemed to me to be about what any division superintendent would have to perform. I never saw him do any laborious work or carry heavy timber. During the time I have been in the employ of the road I have never known Mr. Paul Beardsley to be in control of the construction or operation excepting at short intervals when J. D. Beardsley was absent.

J. W. TEETERS testifies (Rec., 255): I don't know whether I worked for J. D. Beardsley in the fall of 1879 or 1880, but I know I was working for him in 1880. I worked for the railway up to the 10th of February, 1885, with an interval of perhaps two or three months, I was employed in track laying, bridge building and other work. I remember when the gauge of the road was changed, and I did some of the work. I laid all of the track from Capt. Hanna's, about two and a half miles south of Washington, to Nashville, in Howard county (19 miles); during this time no one but J. D. Beardsley had any control over me. Paul Beardsley had nothing to do with laying the track from Capt. Hanna's to Nashville. I had entire charge of the track laying. During the time I have worked on the road, I have worked with P. F. Beardsley. He did not, so far as I could see, do any more work or any greater work than other employés of the road on the same work. My salary as foreman was sixty-five dollars; I don't think that P. F. Beardsley did any more work than I did.

Thus we see from the testimony of his fellow employés without exception, as well as the testimony of the appellant which is hereinbefore cited, that the appellee's statement as to the extent and character of his services are greatly exaggerated, and that while he probably rendered reasonably efficient service, he did not do more than any other good man working in a like situation would have performed, and it is reasonable to assume that the price paid him would have secured equally good service from another. The statements recited above mostly relate to matters which were deemed by the appellee to be of great importance in the preparation of his case. They were nearly all matters within his personal knowledge, and the statements were made upon that assumption, and yet we find that in every instance he is contradicted, not only by the appellant but by a host of witnesses who were in

a position to know the facts, and to speak with entire freedom from any bias growing out of any interest in the matter or relating to the parties. We might go farther and point out many other contradictions and inconsistencies in the appellee's testimony, but this will suffice to show the untrustworthy character of his statements. It is not often that so many errors and inconsistencies can be found in the record of a cause.

Offering an apology for the length of this brief, which upon the record here presented could not well be less, we respectfully submit the cause should be reversed.

JOHN M. MOORE,
A. H. GARLAND,
H. J. MAY,
For Appellant.

Supreme Court U. S.
FILED,
NOV 4 1890
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1890.

No. 119.

JOHN D. BEARDSLEY, *Appellant,*

v.

PAUL F. BEARDSLEY, *Appellee.*

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR THE APPELLEE.

DAN. W. JONES,
THOS. B. MARTIN,
For Appellee.

PRESS PRINTING CO., LITTLE ROCK, ARK.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1890.

No. 119.

JOHN D. BEARDSLEY, *Appellant,*

v.

PAUL F. BEARDSLEY, *Appellee.*

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR THE APPELLEE.

THE BILL.

The bill in this case filed by appellee in the Circuit Court of the United States for the Eastern District of Arkansas, against the appellant and the Arkansas and Louisiana Railway Company, on the 11th day of March, 1886, alleges all jurisdictional facts, and that on the 11th day of April, 1877, a private corporation was organized under the laws of Arkansas by certain citizens of the Town of Washington, and known as the Washington and Hope Tramway Company, with a capital stock of $20,000, divided into shares of $25 each. That the incorporators, in their articles of agreement, reserved to themselves, their successors and assigns, the privilege to convert

the tramway into a railroad corporation under the laws of the State when deemed advisable.

Transcript of Record, p. 1.

On the 31st day of May, 1877, said tramway was converted into a railroad corporation, known as the Washington and Hope Railway Company, with a capital stock of $45,000, divided into shares of $25 each, with the same terminal points as the tramway company.

Ib., p. 2.

On November 7, 1881, certain charter amendments were made by which said railway could be extended from Washington northwesterly to the Indian Territory, and from Hope southeasterly to the Louisiana State line, and the name of the corporation was changed to the Arkansas and Louisiana Railway Company, but it was expressly provided that "the present organization of the Washington and Hope Railway Company shall continue, and the change of name and extension of the road shall not be held to make any change in the organization, time of election, the by-laws or obligations of the Washington and Hope Railway Company." The capital stock was increased to one million dollars, divided into shares of $25 each; the stock of the Washington and Hope Railway Company to be stock of this company and the holders thereof to vote it as such, and at their option to exchange it for stock under the new name in like amounts. But this organization was never perfected so as to become a corporation under the laws of Arkansas, and was subsequently abandoned.

Ib., p. 2

To encourage the building of the Washington and Hope Railway, on the 5th day of March, 1879, an act of the Legislature of Arkansas was approved by the Governor thereof, donating certain lands of the State to said railway company, amounting to about 20,000 acres, for which the Governor subsequently executed and delivered deeds of conveyance to said company. After the passage of said act, the said company commenced active operations upon said railway and progressed so far as to clear out the right-of-way along the entire line and grade the greater part of the road-bed between Washington and Hope, when negotiations were entered into between said corporation and the appellant, John D. Beardsley, acting for himself and one Vinton Alderman, by which said corporation agreed to transfer and assign to appellant all the property of said corporation, including the lands granted by the Legislature, and also give a bonus of $10,000 in the promissory notes of certain solvent citizens of Hempstead County, upon the condition that appellant should complete said road and operate it under the laws of Arkansas. These

negotiations were consummated during the year 1879, and the appellant and said Vintor Alderman became the absolute owners of said Washington and Hope Railway, as tenants in common, with equal interests, and commenced their work of constructing the same as a narrow gauge railroad.

Ib., pp. 4, 5.

The appellant, John D., and the said Vinton Alderman proceeded under great difficulties, for the lack of means, with the work of constructing said narrow gauge railroad, by using for a while wooden stringers for rails for a part of the road and iron rails for the remainder, but afterwards securing all iron for rails, until the latter part of the year 1881, when the said Alderman became desirous of disposing of his one-half interest therein. At that time appellee was a citizen of the State of California, where he received letters from the appellant, John D., who is his older brother of the full blood, urging him to come and take an interest in said railroad enterprise, as he had frequently done before that time and before his connection with said Alderman. Upon these solicitations appellee went to the Town of Washington and ascertained that Alderman's interest in said corporation could be purchased for about $10,000 in cash; but, not possessing that amount of money, he went to the City of New York, at the suggestion and solicitation of his said brother, and there attempted to secure a loan of that sum for the purpose of making such purchase. In this he failed, and returned to the Town of Washington about November 1, 1881, and agreed with his said brother to work for said corporation for $75 per month for a short while, until he could make more satisfactory arrangements. Within a week or two after returning he and his said brother ascertained from Alderman, who was then in the State of West Virginia, that he would dispose of his one-half interest in said railway for $12,000 upon a credit, and thereupon appellee and appellant agreed together that appellant should write to Alderman and accept his terms of sale, appellee insisting upon taking the whole of Alderman's interest for the sum of $12,000, to the end that said railway with all its property should become the joint property of appellee and appellant, share and share alike, but they agreed that appellee should have only two thirds of said interest, which would then make his interest in said property one-third of the whole thereof, and to this he finally consented. After this agreement appellant wrote Alderman, saying that he would take his interest in said railway and its property for said sum of money, and in due course of mail received a reply from Alderman saying that he would consider his said interest sold to him. At that time neither appellee nor appellant had any money of any consequence, and on that account they were

compelled to proceed with their work under great difficulties. The road was operated as far as completed, and all of its proceeds were employed in the payment of its debts and for repairs, both appellee and appellant giving their individual labor with the common laborers employed by them and using the most rigid economy compatible with existence. Soon after this purchase from Alderman, no part of which had then been paid, and on the 1st day of January, 1882, appellant, John D., handed appellee the following declaration of trust:

"W. H. Caruth, president. J. D. Beardsley, superintendent.

"SUPERINTENDENT'S OFFICE,

"WASHINGTON AND HOPE RAILWAY COMPANY,

"WASHINGTON, ARK., *Jan. 1st*, 1882.

"*Memorandum.*

"I hold of the stock of the Washington and Hope Railway Company thirty-three thousand two hundred and fifty dollars, or thirteen hundred and fifty shares, which is sold to Paul F. Beardsley, and which, though standing in my name, belongs to him, subject to a payment of eight thousand dollars, with interest at same rate and from same date as interest on my purchase of Mr. Alderman's stock.

"J. D. BEARDSLEY.

"Witness:

"J. H. BURT."

Appellee, having implicit confidence in the honesty of purpose and sincerity of motive of his said brother, accepted the said memorandum of evidence of his share and went heartily, earnestly, and untiringly to work to make the enterprise a success, and, although said memorandum states that thirteen hundred and fifty shares of the stock were sold to appellee, still he is willing to admit that this was a mistake in calculation made by his said brother, and that it was intended to be only thirteen hundred and thirty-three and one-third shares, that being one-third of all the stock. At the same time, in making this admission, he calls attention to the further mistake in said memorandum as to the value of said shares, which should be thirty-three thousand three hundred and thirty-three and one-third dollars instead of thirty-three thousand two hundred and fifty dollars, and he had all the while and does now treat said memorandum as if thus reformed, to the end that it shall conform to the true intention of the parties and properly express the contract as entered into between his said brother and himself

Some time before the transactions last above stated the stock of the said Washington and Hope Railway Company had been increased from forty-five thousand dollars to one

hundred thousand dollars, divided into shares of twenty-five dollars each, in all four thousand shares.

Appellant and appellee worked together harmoniously and in full confidence with each other, consulting together in all matters pertaining to their said railway enterprise without reserve, and succeeded in completing a first-class narrow-gauge all-iron rail railroad in full operation between said Towns of Washington and Hope, with all necessary switches, side tracks, turnouts, engine, rolling stock, and other appurtenances, including a depot building and platforms at the Town of Washington and proper accommodations for receiving and landing passengers and freight at the Town of Hope, it being well understood and agreed by both appellee and appellant that appellee's interest in all of said property was one-third thereof and appellant's interest was two thirds thereof, the interest of the president and other directors of said corporation being merely nominal and only for the purpose of sustaining the corporate existence under the laws of Arkansas.

Being in this condition and owing but a small debt, appellee and his said brother, after full consultation and agreement, concluded to change the gauge of their said railway and make it uniform with the gauge of the St. Louis, Iron Mountain and Southern Railway, with which it made conection at said Town of Hope, and to extend the line of said road, provided they could make the necessary arrangements for money to carry out their plans and for freight rates with said last-named corporation. Such arrangements were soon thereafter made and work of changing said gauge commenced (*ib., pp. 5–7,*) and on September 13, 1882, in furtherance of this plan, a corporation, under the name of the Arkansas and Louisiana Railway Company, was organized to run from Hope in a southeasterly direction to the Louisiana line, with a capital stock of one million and two hundred thousand dollars, divided into shares of one hundred dollars each, of which appellant owned four hundred shares and appellee owned two hundred shares, with Thomas H. Simms, A. B. Williams and R. B. Williams as mere nominal owners of a few shares to qualify them as directors of such corporation, as appears by articles of incorporation on *page 25 of Transcript of Record.*

On the same day, another corporation, known as the Arkansas and Indian Territory Railway Company, to run from Indian Territory to the Town of Washington and connect with the Washington and Hope Railway Company at its western terminus, was organized with a capital stock of one million dollars, divided into shares of one hundred dollars each. In this corporation, appellant owned four hundred shares and appellee owned two hundred shares, with W. H. Caruth,

H. B. Holman, W. P. Hart and J. D. Conway as mere nominal owners of a few shares to qualify them as directors, as appears by articles of incorporation, on *page 27 of Transcript of Record.*

In each of these railroad organizations an affidavit was mde by three directors that at least one thousand dollars for every mile of road had been subscribed, and that 5 per cent on the amount subscribed to the articles of association had been actually paid unto the said directors named in said articles, as required by the laws of Arkansas.

Ib., pp. 3-4.

On the 18th day of September, 1882, the Washington and Hope Railway, with all the property of every kind, nature, character and description, were sold to, purchased by, and completely merged in the Arkansas and Indian Territory Railway Company, which sale was duly ratified by the stockholders of the said Washington and Hope Railway. A duly authenticated certificate of such sale and purchase was filed and recorded in the office of the Clerk of the Circuit Court and *ex officio* Recorder for said Hempstead County, on the 3d day of January, 1883, and on the 12th day of January, 1883, was filed in the office of the Secretary of State, and by him duly recorded in a book provided by law for that purpose, a true copy whereof is filed, marked Exhibit "G," to the bill, on pages 28–30, of Transcript of Record.

Ib., p. 3.

On the 17th day of May, 1883, the Arkansas and Indian Territory Railway, together with all its property of every kind, nature, character and description, including all the property purchased by it from the Washington and Hope Railway as aforesaid, was sold to, purchased by, and completely merged in the Arkansas and Louisiana Railway Company, which sale and purchase were duly ratified by the stockholders of both corporations.

On the 12th day of June, 1883, the capital stock of the Arkansas and Louisiana Railway Company was increased from one million and two hundred thousand dollars to two million and four hundred thousand dollars, which affidavit of the directors, and certificates of such sale and purchase, and of said increase of stock were filed together in said office of said Secretary of State, on the 25th day of June, 1883, and by him duly recorded in a book provided by law for that purpose, and a true copy thereof is filed, marked Exhibit "H," to the bill.

Ib., pp. 4 and 31–34.

On the 22d day of May, 1883, appellant, acting for himself and appellee, entered into a construction contract with the Arkansas and Louisiana Railway Company, all of whose direc-

tors at the time, except appellee, were merely nominal shareholders, with no real or beneficial interest in the stock or property of the railway company, and all of whom were willing to and did make and ratify any and everything performed by appellant concerning the construction, operating and managing said railway. The appellee, reposing the utmost confidence in the judgment, integrity and good faith of his brother, the appellant, entrusted all such matters to him, not even reading the contract, but joined with the other members of the board of directors (if, indeed he were then a director), in ratifying the same, being induced to do all things which the said brother suggested in these matters, by his implicit confidence that it was for the mutual benefit of his said brother and himself, to be shared according to their respective interests as aforesaid.

Ib., 7, 8.

The bill charges that in all matters pertaining to said railway and its properties, the appellant acted for himself and as trustee for appellee, without any change whatever of their respective rights or interests therein; that, being fully imbued with confidence that his brother would in no wise abuse his trust, appellee did not exact or even request from him any other writing or evidence of his interest in said railway or any of its properties, or in said construction contract, either present or prospective; and that after the construction contract was made, there was no change whatever in the relations existing before that time between his said brother and himself, each giving his time, labor and skill, as well as all the assets which came from the Washington and Hope Railway, to the enterprise the same as before.

During the month of November, 1882 (*1883 in Record, p. 8 being misprint*), they had succeeded in changing the gauge of said railway as contemplated for the whole distance between said Towns of Washington and Hope. In the meantime, they had commenced upon the construction of the road from the Town of Washington to the Town of Nashville, in Howard County, Arkansas, and on the 4th day of October, 1884, completed it, and have been since that time running trains thereon, so that said railway now extends the whole distance from said Town of Hope by way of Washington to said Town of Nashville, a distance of about twenty-six miles, and is a first-class standard-gauge road for both passengers and freight, with all necessary switches, side-tracks, turnouts, depot buildings, platforms, etc.

In these four years during which appellee was connected with this enterprise he gave his entire time, day by day, and considerable portions of many nights, to the work upon the

road and in its interests. He is a good locomotive engineer and a good machinist. He has great physical strength and as much endurance as any man with whom he has ever met. He has not confined himself to any one branch of the business, but has laid ties and rails, built bridges, worked in the mud and water with the common laborers, in rain and snow and storm as in sunshine, not ceasing his labors because of the weather or the nightfall, but continuing them until the end in view was accomplished, without regard to the elements, the seasons, or the hours for refreshment and repose. In addition to all this he superintended the entire construction and operating of said road, and nothing was done thereon without his supervision and control. He has acted as engineer when necessary, and it was often necessary, and has frequently spent the whole night upon his engine, and then worked unceasingly all the next day and regularly thereafter. He has gone into the machine-shop of the road and repaired the engines and done any other work to save expense or meet an emergency He has repaired cars as well as engines, and, in fact, there is nothing upon this whole line of road that has been done without his having taken a part in it. There is scarcely a piece of timber, whether of bridge, or trestle or cross tie, and scarcely a piece of iron, whether of rail or fish-plate or spike, from Hope to Nashville that has not been handled by him in one way or another or has felt the sweat from his brow or his hands. All these things has he done, and more. And during all these years he has taken from the revenues of the road not one dollar more than would actually suffice for the bare necessities of life for himself, his wife, and his little children, rarely exceeding in any one month more than one hundred dollars, and oftener a much less amount. All these things has he done, and more, for the purpose of accumulating a fortune for himself and family, by honest and honorable industry, and without one fear that his hopes were to be thwarted by the conduct of his said older brother. When appellee made his said purchase of the Alderman interest, the appellant, John D., had assumed the title of "superintendent" of said railway, and gave appellee the title of "assistant superintendent" thereof; but about the month of December, 1885, appellant arbitrarily assumed the title of "lessee and general manager" and gave appellee the title of "master of transportation," having before that time, or about the month of December, 1883, arbitrarily fixed his own salary at two hundred dollars per month, and that of appellee at one hundred dollars per month.

Appellee did not assent to this arrangement of salaries, but

protested against it for the reason that he believed the amounts ought to have been reversed so as to have given him double the amount which appellant should have had if they were to be proportioned to the amount of labor and skill devoted by each, or at least an equal amount. But appellee took no active steps beyond protesting and objecting against this arrangement at the time, for the reason that he did not wish to create any ill feeling between his said brother and himself, and because he believed that the matter would be satisfactorily adjusted between them when the work of constructing said railway to its terminal points should be concluded, and for the further reason that he recognized the fact that the road needed all its money for construction and to meet its liabilities; and he was willing to use the utmost frugality in his personal and domestic expenditures to accomplish these ends. But appellee did not conceive that his said brother was then paving the way to oust him of his title to his said property, or to claim that appellee's relation to said railway was merely an employe for wages and nothing more. Such, however, was the fact.

During the month of January, 1886, in the course of a private correspondence between appellee and his said brother in relation to a misunderstanding between them regarding domestic matters, appellee was informed by appellant that he did not recognize appellee as a party in interest in said corporation, but merely as an employe for wages, and that he as sole lessee and general manager of said railway, considered his own powers over said corporation to be supreme, and that he could do with it just as it should suit his own pleasure to do, without regard to appellee's wishes or claims of interest in the matter. To this appellee seriously demurred, and expressed his astonishment at such an assumption on the part of his said brother, in whom he had reposed such trust and confidence; but after a lengthened correspondence and repeated efforts on the part of appellee to adjust the matter without resort to the courts, he received a letter from Mr. H. H. Wheless, the auditor of the defendant railway, which is in words and figures following:

"J. D. Beardsley, lessee and general manager; W. H. Caruth, treasurer; P. F. Beardsley, master of transportation; H. H. Wheless, auditor.

ARKANSAS AND LOUISIANA RAILWAY,
AUDITOR'S OFFICE,
WASHINGTON, ARK., February 15, 1886.

P. F. Beardsley, Esq., Master of Transportation, Nashville:

DEAR SIR—The general manager requests me to say to you that from this date your services will not be required.

Voucher will be made you for entire month, February, but it will not be necessary for you to complete the unexpired time covered by this. He requests me to receive from you all tools, material, papers, etc., in your possession belonging to the Arkansas and Louisiana Railway; also your passes, keys to offices, desk, etc. Respectfully yours,

H. H. WHELESS, *Auditor.*"

The same demand was made by the appellant, John D., in person, and appellee refused compliance with it, as well as that of said auditor.

Finding all overtures upon his part for an amicable adjustment to be futile, and them and himself treated with contempt by his said brother, he found a resort to the courts to be indispensable for the security and protection of his rights, and, upon the advice of his counsel, applied to said auditor of the defendant railway for a statement of the financial condition of said railway, as the same appears by the books kept by him, to the end that he might use such statement in this suit. This was refused by said auditor for the reason given by him, that he was instructed by appellant not only not to give appellee any statement from said books, but under no circumstances whatever to permit him to inspect or look into said books. Appellee then, under the further advice of his counsel, applied to the secretary of the board of directors of the defendant railway for permission to examine the books of the corporation for the purpose of obtaining therefrom information deemed by his said counsel to be necessary for use in bringing this suit. This was refused by said secretary for the reasons given by him, that he was instructed by appellant not only not to give appellee any statement from said books, but under no circumstances whatever to permit him to inspect or look into said books. Appellee reminded said secretary that he was and is a stockholder in said corporation as well as a director therein, and as such was entitled to inspect said books, and that it is made a cause for forfeiture of the charter of said corporation under the laws of the State of Arkansas for him to refuse this permission to examine said books; but said secretary still refused such permission, or to furnish appellee any information whatever from said books; and appellee charges the truth to be that said secretary is one of the attorneys for appellant, and in thus refusing a privilege belonging of right and under the law to appellee, he acted under the direction of appellant. In consequence of this conduct on the part of said auditor and said secretary, who were acting under the direction of appellant, as aforesaid, appellee has been unable to make exhibits, or even positively accurate statements, of many things deemed by his counsel to

be proper and necessary to the correct understanding of appellee's rights and appellant's liabilities in the premises.

After entering into the contract of purchase of two-thirds of the Alderman interest in the Washington and Hope Railway, on the 1st day of January, 1882, as aforesaid, appellee and appellant, having full confidence in the honesty, integrity, and good faith of each other, kept no books of account as between themselves, but each took from the revenues of the business from time to time whatever was necessary for the actual wants of himself and family and no more; but in January, 1884, they concluded to employ an auditor and keep accurate accounts of all the affairs of the defendant railway, which has been done since that and is still done. Appellee, as before stated, has been refused access to said books and is unable for that reason to state many transactions of a financial nature which appear upon said books, but from his recollection and from memoranda made by him while having access to said books, and from information obtained from said auditor before he was prohibited from giving information, he is able to make the following statement, which he charges to be true: The total credit given to said Vinton Alderman upon said books for his one-half interest in the Washington and Hope Railway is $12,000, twelve thousand dollars, and the total amount charged to him as having been paid by said defendant railway amounts to forty-eight hundred dollars ($4800), which was paid from time to time and before the 13th day of February, 1886, and entirely out of the earnings and pronts of said defendant railway, and after appellee's said purchase was made; and there also appears upon said books a credit to appellant in the sum of forty-seven hundred and thirty-two dollars and fifty cents ($4732.50) as the proceeds of the sale of a part of the iron, fish-plates, spikes and cars, which were of the property of the Washington and Hope Railway, and belonged to the same at the time and after appellee's said purchase of his interest therein as aforesaid. Said credit should not have been made to appellant, but said sum belonged of right to the defendant railway, and said sum was used by appellant for his own private purposes and without the knowledge or consent of appellee, and was a wrongful conversion of the trust funds in his hands; and there also appears upon said books a statement of the purchase of two thousand fire-brick for the use of the defendant railway, and which were charged as such, but a large number of said bricks, at least one-half of them, were used by appellant for his own private purposes and no charge to himself has been made upon said books, and said bricks were worth and readily sold for eight cents each. Appellant used of the earnings and profits of said defendant railway from time to time large sums

of money for traveling expenses for himself and family and the education of his children abroad and other matters not appertaining to the business or affairs of the defendant railway, but he cannot say what amounts were used for these purposes, nor whether proper charges were made upon said books against appellant for them; and in fact appellee has no way, except through this honorable court, of ascertaining the condition of the affairs of said railway and the value of his interest therein, on account of the arbitrary powers which appellant is exercising over the officers of said railway and over the entire business and properties thereof, in utter contempt and disregard of appellee's rights and demands.

Appellant, during the year 1884, used of the earnings and profits of the defendant railway a considerable amount of money in building a residence upon lots and a piece of land in said Town of Washington, which he claims to be his private property, and he is now engaged in building considerable additions to said residence, and is using the same for his private use and account, and for this, as appellee is informed and believes and so states, has made no proper charge against himself upon the books of the defendant railway. The assets of the Washington and Hope Railway at the time appellee purchased his interest therein as aforesaid, and which were afterwards sold to the Arkansas and Indian Territory Railway, and by the Arkansas and Indian Territory Railway to the defendant railway, as hereinbefore stated, were, according to appellee's recollection and belief, as follows:

Amount due from bonus notes, since collected, about	$ 6,000
Amount since realized from sale of iron, fish-plates spikes, bolts and cars, about	14,000
Amount since realized from sale of lands granted by State as aforesaid, about	8,000
Amount of net earnings of narrow-gauge railway for year 1882, about	8,000

All of said assets, as well as all of the assets, earnings and profits since then realized by the defendant railway corporation, except those wrongfully converted by appellant, as aforesaid, have been used in the construction of the defendant railway as it now exists, and for the payment of its debts and expenses.

The net earnings of the defendant railway for the year 1885, as appellee was informed by the auditor thereof before the issuance to him of the arbitrary order of appellant, as aforesaid, amounted to the sum of thirty-four thousand four hundred and twenty-nine dollars and eighty-eight cents ($34,429.88), but appellee is unable to state the earnings for any other year for the reason before given, that he is not permitted

to look into the books of said defendant, and can obtain no further information therefrom, as before stated. Certain citizens of the County of Howard, in the State of Arkansas, donated to the defendant railway about 320 acres of land, situate at and contiguous to the Town of Nashville, in said county, upon condition that said defendant railway should be extended to said town, and a depot located on the said land. This has been done, and the deeds to said lands have been executed and delivered to appellant, in his own individual name; but the truth is, that said appellant received such title in trust for himself and appellee, according to their respective interests in the defendant railway, and not otherwise, and said lands belong of right and in equity to said defendant railway. Many valuable improvements, including depot buildings, etc., and a large and commodious hotel, have been built upon said lands; a large portion of said lands have been divided into blocks and lots, now forming a part of said Town of Nashville, and a portion of them sold by appellant, or bargained for sale (but what portion appellee is unable to say), and all of said lands remaining unsold and the proceeds of those portions which have been sold or bargained for sale are properly and equitably assets of the defendant railway. Said lands are described as follows: The northwest quarter of the northwest quarter; the northeast quarter of the northwest quarter; the southeast quarter of the northwest quarter; the northwest quarter of the northeast quarter; the northeast quarter of the northeast quarter; the southwest quarter of the northeast quarter; the southeast quarter of the northeast quarter, in section 26, in township nine (9) south, in range 27 west, being the land known as the Rector place, exclusive of the lots sold previous to August 30, 1883, out of the northeast quarter of the southwest quarter and the north half of the northeast quarter, as per deeds made by A. M. Rector of said January 21, 1885.

There are other lands belonging to said defendant railway, the deeds to which are in the name of appellant, but appellee cannot specifically describe and set forth the same for the reason before given, that he is denied access to the books of the defendant railway by appellant.

The appellant heretofore made a contract with the Pan Electric Telephone Company, by which he has the exclusive right to the use of the instruments of the said telephone company along the line of the defendant railway in the States of Arkansas and Louisiana; but the truth is, said contract was made for the benefit of the defendant railway, though standing as the contract of appellant with said telephone company.

Appellee is unable to state the terms and conditions of said

contract otherwise than that it is largely beneficial to him and appellant, for the reason before given, that he is denied access to the books of the defendant railway by appellant, as aforesaid. There are many other things affecting appellee's rights in said railway, but which he is unable to state in any satisfactory manner for the reason before given, that he is denied access to the books of the defendant railway by appellant, as aforesaid. Some time before appellee's said purchase of two-thirds of the Alderman interest in the said Washington and Hope Railway, and after Alderman and appellant became the owners thereof, the capital stock of said railway had been increased from $45,000 to $100,000, divided into shares of twenty-five dollars each, making in all 4000 shares, as hereinbefore stated, and such was the capital stock of said corporation when appellee made such purchase; but he is unable to state when this increase was made, inasmuch as he fails to find any record thereof in the office of said Secretary of State, and he is denied access to the books of said corporation (in which the same is recorded) by the secretary thereof, who has the same in his keeping and who is acting under the commands of appellant, as aforesaid. Said 4000 shares of stock were all issued in the name of appellant, if in fact issued at all, who held them in trust for himself and said Alderman, and afterwards held them in trust for himself and appellee, when appellee made his said purchase; but appellee cannot positively say whether certificates of said stock or of any other stock were in fact issued, because of the fact that he cannot have access to the books of said corporation, wherein the proceedings in relation thereto are recorded; but the truth is the said appellant in all transactions connected with this business, was the active agent and trustee, first of the said Alderman and afterwards of appellee, and the directors of said corporations herein named, commencing with the Washington and Hope Railway and ending with the defendant railway, recognized appellant after he became interested as aforesaid, as the owner of all the properties of said corporation, for himself and as trustee, first for said Alderman and afterwards for appellee, with full powers to act in the premises as he might deem advisable for the welfare of the corporation; the shares of stock appearing upon the books to belong to all of the directors, except appellee, were merely nominal, and were of no value to them except for the purpose of sustaining the corporate existence of the corporation aforesaid; such proceedings were had by such directors from time to time as appellant suggested were for the interests he represented, and the various meetings of said directors were called and held upon request of appellant, and at no time without such request. Appellee became a director in the

defendant railway because of the request of appellant, and without questioning his motive, and voted and acted as such director just as appellant requested him to do, and without inquiring as to the reasons for so doing.

This he did because of his perfect confidence in the honesty, integrity, good faith, and good judgment of his said brother, the appellant, who is seven years older than appellee, and for whom appellee had always since his earliest childhood entertained the tenderest feelings of brotherly love, respect and confidence.

Although appellee is a director of said defendant railway, and also a stockholder, owning one-third of all the properties of said railway, he is not permitted to look into nor inspect the books of said corporation; his rights and interests in said corporation are denied, and he is arbritarily ordered by appellant to keep away from the property of said railway; appellant is converting the trust reposed in him as aforesaid by appellee to appellee's financial ruin; denies that appellee has any interest whatever in the defendant railway or in any of its properties, and boasts that he is in possession and that he will use the means in his hands to maintain his position, and that appellee is unable to maintain a suit against him for want of means to employ counsel and defray the expenses necessary for that purpose; and has gone so far as to demand from appellee all passes which he has received from other railroads, and, on account of appellee's refusal to comply with this demand, has threatened to take such action as would induce said railroads to withdraw said passes from appellee, and has caused the conductor on the defendant railway's train to demand and collect fare from appellee for a nurse in charge of appellee's infant child, while going with appellee's wife on the train of said railway from Nashville to Washington. By virtue of the power and authority which has been given to him by the directors of the defendant railway, and which they are powerless to withdraw or abridge, appellant will be able to and will maintain his said wrongful and unrighteous position, and will be able to and will destroy appellee's interest in the defendant railway and render the same valueless, unless prevented from so doing by the powers inherent in and exercisable by this honorable court.

The prayer of the bill is that an account be taken and stated by a master of this court, of all the property of the defendant railway company, whether the same appear upon the books of said railway, or to be ascertained by evidence, including all properties, whether real personal or mixed, which legally or equitably belong to said railway, whether held in the name of appellant or otherwise, and whether acquired before

or after the construction contract entered into by the directors of the defendant railway and appellant, as herein mentioned; that appellee be declared and decreed to be a tenant in common with appellant in said defendant railway, and in all of said properties to have and to hold an undivided one-third thereof; that the president and secretary of the defendant railway company be required to issue and deliver to appellee certificates of stock for one-third of all the stock of the defendant railway, so far as the same has been completed as aforesaid, at the rate of $20,000 per mile, in shares of the par value of $100 each; that appellant be declared and decreed to be a trustee for appellee in the construction contract entered into by appellant and the directors of the defendant railway, for the construction of said railway as aforesaid, and also in the contract made by appellant with the Pan Electric Telephone Company as aforesaid, and that appellee's interest in each of said contracts, and the benefits arising therefrom be declared and decreed to be a full one-third thereof, and that the master appointed to take and state the account between appellee and appellant as prayed for herein, be empowered and directed also to state the respective interests of appellee and appellant in and to the property, moneys, assets, profits and benefits arising from said contract, and that appellant be required to disclose and account for all the moneys and property legally and equitably belonging to the defendant railway, or appellee, which have been applied by him at any time to his own account or purposes, and not already fully accounted for by him; that appellant be declared and decreed as holding all the property purchased by or given to him for the defendant railway, as hereinbefore specifically set forth, as a trustee, for the use and benefit of the said railway, and that he be required to make a deed or deeds to all of said property to the party equitably entitled thereto, and account for such portions thereof as he may have converted to his own use; that the credit of $4732.50 in favor of appellant, upon the books kept by the auditor of the defendant railway, being the proceeds of the sale of the iron, etc., of the narrow-gauge railroad as aforesaid, be canceled and charged back to him and put to the credit of the defendant railway; that the defendant railway be required to pay to appellee the sum of $100 per month for every month since the first day of December, 1883, for balance due him as salary, to equal the amount drawn by appellant from the revenues of the defendant railway as aforesaid; that a receiver be appointed to take charge and control of said defendant railway and all of its properties, and control and manage the same under the orders and directions of this honorable court during the pendency of this action, and until the

final decree may be rendered herein, and for such other and further relief as to the court may seem equitable and just, and the nature of the cause may require, and that a writ of subpœna be issued, directed to the said John D. Beardsley, and the Arkansas and Louisiana Railway Company, commanding them, at a day certain and under a certain penalty to be therein inserted, personally to be and appear before this honorable court, then and there to answer the premises, and to stand and abide such order and decree therein as shall seem agreeable to equity and good conscience.

The bill was sworn to and verification under oath by defendants to their answer and pleadings waived.

Ib., pp. 8–17.

The exhibits to the bill are contained on pp. 18–34 of the Transcript of the record. They are: Exhibit A—Articles of Association of Washington and Hope Tramway Company.

Exhibit B—Articles of Association of Washington and Hope Railway Company.

Exhibit C—Amendment to Articles of Association of Washington and Hope Railway Company, subsequently abandoned.

Exhibit D—Articles of Association of Arkansas and Louisiana Railway Company.

Exhibit E—Articles of Association of Arkansas and Indian Territory Railway Company.

Exhibit F—Affidavit of directors of Arkansas and Indian Territory Railway Company, that $1000 per mile for every mile of the road had been subscribed, and that 5 per cent. of stock subscription had been paid.

Exhibit G—Sale of Washington and Hope Railway Company to Arkansas and Indian Territory Railway Company.

Exhibit H—1. Increase of capital stock of Arkansas and Louisiana Railway Company.

2. Affidavit of directors of Arkansas and Louisiana Railway Company, that $1000 per mile for every mile of the road had been subscribed, and that 5 per cent. of stock subscription had been paid.

3. Sale of Arkansas and Indian Territory Railway Company to Arkansas and Louisiana Railway Company.

Ib., pp. 18–34.

THE ANSWERS.

The defendant railway company, in its answer, admits the truth of the allegations in the bill in regard to its corporate organization and the acquisition by it of the property and franchises of its predecessors.

Ib., p. 35.

Appellant, in his answer, says:

"It is true that the several corporations mentioned and described in said bill were incorporated at the time and in the manner alleged, and he supposes that Exhibits 'A,' 'B,' 'C,' 'D,' 'E,' and 'F,' to said bill were correct copies of the Articles of Incorporation of said several corporations; but he alleges that no stock was ever issued in pursuance of the subscriptions contained in the Articles of Association of the Arkansas and Indian Territory Railway Company, or of the Arkansas and Louisiana Railway Company, nor was any part of said stock subscriptions ever paid in save what was paid by this respondent for the purpose of securing the charter. After the organization of said corporations and the purchase by them respectively and successively of the property and franchises of the Washington and Hope Railway Company, as set out in said bill, it was agreed that certain stock was to be and the same was in fact issued by the Arkansas and Louisiana Railway Company to the stockholders of the Washington and Hope Railway Company, as will herein be fully shown.

"It is likewise true that the several sales and transfers of the property, rights and franchises of said corporations alleged in said bill to have been made, were made, and that the property and franchises of said several corporations were finally vested, by virtue of said sales and transfers, in respondent's co-defendant, the Arkansas and Louisiana Railway Company.

"And he alleges that it was, among other things, agreed by and between the Washington and Hope Railway Company and the Arkansas and Indian Territory Railway Company, in the negotiations for the purchase by the latter of the property and franchises of the former company, that the vendee would issue to the vendor one hundred thousand dollars of its paid-up capital stock, which was to be delivered to the stockholders of the vendor in lieu of the stock held by them in said corporation at the time of said sale, and said arrangement was assented to in writing by each and all of the stockholders of said company.

"And the same agreement was made by and between the Arkansas and Indian Territory Railway Company and respondent's co-defendants, the Arkansas and Louisiana Railway Company, upon the purchase by the latter of the property and franchises of the former company, and was assented to by the stockholders of the former company.

"That the object and intention of said agreements was that each of the stockholders of the vendor corporations should obtain in the vendee corporation an amount of stock equal to what he had theretofore held in the vendor corporation, and upon the consummation of the respective sales aforesaid, each of the stockholders of the vendor became entitled to an amount

of stock in the vendee equal to what he had previously held in the prior corporation, and under said arrangements each stockholder in the Washington and Hope Railway Company acquired the right to the like amount of stock in the Arkansas and Louisiana Railway Company.

"Respondent further says that his co-defendant has issued one hundred thousand dollars of paid-up stock under and in pursuance of the aforesaid agreement, as will be hereinafter more fully shown, and that it has issued no other stock except what was issued to respondent as hereinafter stated."

He states some of the terms of his contract with the Washington and Hope Railway Company, of September 10, 1879, (*ib., p. 38*), and makes exhibit of said contract in full, as "E" 2. (*Ib., pp. 58-61.*)

He further states (*ib., p. 38*), that sometime after he had entered into said contract with the Washington and Hope Railway Company, he associated with him in said enterprise the said Vinton Alderman, and that it was agreed between them that they should each contribute to the expense of constructing and completing said road, and upon receipt of the stock thereof from the directory, that it should be divided between them equally.

He further states (*ib., p. 39*):

"That this time the capital stock of said corporation was forty-five thousand dollars, and upon the completion and acceptance by said company of said road as aforesaid, the directors caused the same to be valued by a committee by them appointed for that purpose. A copy of said resolution is herewith filed, marked Exhibit 'G.' The same was appraised at one hundred thousand dollars, and thereupon the stock of the company was increased to that sum, and paid-up certificates of said stock were issued to respondent for himself and the said Alderman, save a few shares, reserved and issued to members of the directory for the purpose of rendering them eligible as directors. Said road was completed as aforesaid before complainant came to Washington, and it is not true, as alleged, that he participated in the construction thereof.

"Defendant further represents, that the said Alderman had contemplated removing to Hempstead County, in this State, but in the year 1881, he concluded to remain in Ohio, and thereupon became anxious to dispose of his stock in the Washington and Hope Railway Company, and several times wrote to respondent asking him to purchase the same, which he declined to do for the reason that he did not have the means necessary to make the purchase. The road was in debt and the earnings thereof were, at the time, very light; but about the -- day of ——, 1881, defendant learned that

the said Alderman was proposing to sell his stock to the president of the Texas and St. Louis Railway Company, which was a corporation constructing a narrow-gauge railroad in this State to be operated in competition with the St. Louis, Iron Mountain and Southern Railway, upon which road the Washington and Hope Company was largely dependent.

"Defendant knew said company and the president thereof could command large capital, and was fearful that if he acquired said stock it would prove prejudicial to respondent's interest. Wherefore, and solely in consideration of said information he wrote at once to said Alderman, proposing that he would purchase his stock for twelve thousand dollars, if he would sell it to him on a credit. His proposition was accepted by the said Alderman, and he thereupon became the purchaser and owner of said stock."

As to sale of two thirds of the Alderman interest to appellee, he says (*ib., p. 41*):

"Soon after complainant came to Washington and entered into the service of the defendant as aforesaid, and after he learned that defendant had purchased the stock of Vinton Alderman and owned the greater part of the stock of the Washington and Hope Railway Company, he began to importune defendant to sell him a part of said stock representing that he still had interests in California, from which he expected to realize money with which he could pay for the same. Defendant did not wish to sell him the stock or believe that he would be able to pay for the same, but finally, upon his urgent solicitations, consented to sell him thirty three thousand two hundred and fifty dollars of said stock for the sum of eight thousand dollars, and, inasmuch as he was paying interest on his purchase of stock from the said Alderman and was realizing no dividends thereon, he thought it was but just that complainant should pay him interest from the date of said purchase, and so stipulated. It was further agreed that the stock was not to be delivered to complainant until he should have paid therefor. *On the day after he had agreed to make said sale, defendant wrote and delivered to complainant the memorandum copied in his bill.* Said sale was not made in pursuance of any previous agreement or under any other circumstances or with any other understanding than as herein stated. That from that time until sometime in the month of January, 1886, when complainant became offended with respondent, the matter of said sale was never mentioned or alluded to between them. Complainant did not during all said time pay or offer to pay a cent on said purchase. And respondent, knowing that he had failed to realize anything from his alleged gold mine, and without means to pay for the same,

supposed he had abandoned it, and had himself ceased to think of it."

He says (*ib., pp. 42-43*): "In the summer of 1882 respondent ascertained that the St. Louis, Iron Mountain and Southern Railway Company would aid him in extending the road, and it was at once determined to proceed with the extension thereof. * * * * Complainant was not a member of the directory and was not consulted by the respondent or any one else, so far as he knows, as to the policy of the extension. As to the matter of the widening of the gauge of said road, it was determined upon by respondent, as he now remembers, during an interview with R. S. Hays, the first vice-president of the St. Louis, Iron Mountain and Southern Railway Company, at St. Louis, in the summer of 1882, and when complainant was at Washington, Arkansas, several hundred miles away.

"Further answering, defendant says it is not true that he, acting for himself and complainant, entered into a construction contract with his co-defendant, and he states the facts in that behalf to be that after the acquisition by the Arkansas and Louisiana Railway of the property and franchises that had formerly belonged to the Washington and Hope Railway Company, and after it had been determined that the said road should be extended the directors looked exclusively to respondent for carrying said purpose into effect, and in order to enable as well as to induce him to do so a construction contract was entered into between respondent and his co-defendant, the terms of which will presently be fully set forth; that prior to the making of said contract respondent was a director in said company, and knowing that he could not lawfully enter into contract with the company while holding that position he withdrew from the directory, and the complainant, who was then and at the time said contract was entered into a director in said company, well knew and understood the purpose for which respondent withdrew from the directory.

"That on the 22d day of May, 1883, a contract was entered into by and between respondent, acting solely and exclusively for himself and co-defendant, by the terms of which he undertook and agreed to change the gauge of said road, to lay the same with a heavy iron rail, to build depots, equip the road with sufficient rolling-stock, and to extend the same, and to assume and pay all debts and liabilities of said company, amounting to near seventy thousand dollars, in consideration of which said company agreed to convey to respondent the lands donated to it by the State, amounting to about twenty thousand acres, to issue to him stock to the amount of $10,000 per mile on that part of the line between Washington and Hope and $20,000 per mile on the residue of

the road, said stock to be issued and delivered to respondent as said road was completed and accepted in sections of one mile, and first mortgage bonds in the sum of fifteen thousand dollars per mile to be issued and delivered to him as said work progressed and was completed and accepted in sections of five miles, and to lease said road and the revenues and income thereof to respondent for the period of five years. A copy of said contract is herewith filed, marked Exhibit 'H.'

"As before stated, complainant was at the time said contract was entered into a director in said company, some shares of stock having been issued in his name in order to qualify him to act in that capacity, and he was present at the time said contract was entered into, had full knowledge of the terms thereof, and voted upon and in favor of the resolutions adopted by the board authorizing and ratifying the same.

"Respondent further represents that he made arrangements with the St. Louis, Iron Mountain and Southern Railway Company for money and material with which to extend and make the changes in said road contemplated in his contract with his co-defendant, and as security for said money and material he hypothecated the stock and bonds issued to him by his co-defendant and assigned for the benefit of said company a half interest in said construction contract to one George C. Smith, as shown by the indorsement on Exhibit H hereto.

"There has been issued to respondent, under the provisions of said contract, one hundred thousand dollars of the stock of said company and two hundred and forty thousand dollars of bonds, all of which have been hypothecated to the St. Louis, Iron Mountain and Southern Railway Company, as hereinbefore alleged, and with the money and material so obtained respondent had extended said road to Nashville, in Howard County, Arkansas, has converted the same into the standard gauge and has replaced the iron on said track with a heavy and better quality of iron.

"And respondent alleges that at the time said contract was entered into between him and his co-defendant, and during all the negotiations for means with which to carry on said work, and during the progress of said work there was never in his mind any thought of associating complainant with him in said contract, nor was there ever the slightest intimation on complainant's part that he had or expected to have any interest whatever therein. Complainant well knew that he could not legally, being a director in said company, be a party personally to said contract. He knew that respondent had withdrawn from the directory in order that he might be enabled lawfully to enter into said contract; and he like-

wise knew if it had been the intention to associate him with respondent in the contract there had been no obstacle to his withdrawing from the directory as respondent had done and becoming a party thereto.

"And respondent further represents that he is and has since the execution of said contract been in the possession of said road as lessee thereunder; that he had administered the revenue thereof with great economy, applying every dollar of the earnings to the construction and equipment of the road and property, saving a small salary of two hundred dollars per month, which he has allowed himself for the support of his family; that it is not true that he has used the earnings of the road for the payment of the travelling expenses or any other expenses of his family, or in building or adding to his residence; or that he has ever at any time overdrawn the amount of said salary or diverted the earnings of the road or any part thereof from the purposes aforesaid, but, on the contrary, he has much of the time withdrawn less than his salary.

"He has likewise caused an account to be kept of the earnings and of the expenditures in constructing, equipping, and operating the road, and the books now show correctly and in detail all of the earnings and disbursements of the road, and on what account the same were made and the cost of each addition to said road since it has been in respondent's possession, and any accountant can obtain within a very short time an exact knowledge from his books of the past and present financial condition thereof. He has been thus particular in keeping said accounts and in separating the same from his personal and family expenditures, because he desired to know at all times the exact financial condition of the road, and deemed a rigid economy in the administration of its finances as essential to the successful performance of his contract with his co-defendant and with its predecessor, the Washington and Hope Railway Company, and not because he doubted his right to apply the earnings as he might see fit under the terms of his several contracts with said companies, having due regard for the claims of his creditors and those parties who were furnishing him the money and material with which to carry on said work.

"It is not true that respondent has caused any entries either of debit or credit of the sum due the said Vinton Alderman for the purchase of his stock to be made in the books of said company; said account, as well as all the other accounts referred to by the complainant in said bill, are entered in respondent's private books of account. It is true that respondent has paid the said Alderman about the sum of five thousand five hundred dollars of said indebtedness. Said

payments were not made out of the earnings of the road except about $2900, which has been paid out of the earnings since said road has been held by him as lessee, and respondent does not and has never doubted his right to so apply said earnings. It is not true that the credit of forty-seven hundred and thirty-two dollars and fifty cents realized from the sale of said iron, fish-plates, spikes, and cars was entered upon the books of said company or that said material ever belonged to the Washington and Hope Railway Company. Respondent purchased said material from the County of Shelby, in the State of Tennessee, before he had entered into the contract with the said company, and paid for the same with his own means. He had never charged the same to said company or received a credit therefor. Said material belonged to him, and the proceeds of the sale thereof was properly entered in his books of account. The allegations of said bill as to the assets of the Washington and Hope Railway Company are not true. The alleged bonus notes of six thousand dollars were a part of the consideration enuring to respondent under his contract to construct said road. Said notes had been indorsed and negotiated for the purchase of material that entered into the construction of said road, and part of them had been paid when complainant came to Washington. The sum realized from the sale of said cars, spikes, bolts, and other material, amounting to ——— dollars, was in part paid to the St. Louis Bolt and Iron Company for the purchase-money of said material. The amount realized from the sale of said lands was about five thousand dollars, and was paid out for the rails. Said lands and the proceeds thereof belonged to respondent, though it is true that he applied the same as alleged to the construction of said road and the payments of debts thereby incurred, and there were no net earnings derived from said road in the year 1882. All of the earnings for said year had been consumed in the repairs of the road and its equipment."

He says (*ib., p. 46*):

"He has at all times exercised absolute and unqualified control of said road and everything appertaining to it and never at any time recognized in complainant any right to be consulted as to the management thereof. The same is true as to all the negotiations for money and material for equipping and extending said road, and complainant has had full knowledge of all the facts and has acquiesced in and by his conduct recognized and acknowledged respondent's complete and exclusive control of said road and the rights claimed and exercised by him as hereinbefore alleged."

REPLICATIONS.

Appellee's replications to the answers are in the usual form (*ib., pp. 69-70.*)

EXHIBITS.

Appellee calls the attention of the court particularly to the Exhibits "E" 2 and "H" to appellant's answer (*ib., pp. 58-61 and 63-68.*

Exhibit "E" 2 is as follows:

"E." 2.

WASHINGTON, ARK., *November 7th, 1879.*

On this day the board of directors of the Washington and Hope Railway Company met at the office of A. B. and R. B. Williams, in the Town of Washington, in the County of Hempstead, in the State of Arkansas, pursuant to the call of the president.

Present: W. H. Caruth, president; R. B. Williams, secretary; Thos. H. Simms, treasurer, and Directors W. P. Hart, J. K. Jones, J. D. Conway, and H. B. Holman.

The president, as chairman of the executive committee of this board, on behalf of said committee verbally reported that they had, on the 10th day of September, 1879, entered into a contract and agreement with Major J. D. Beardsley for the completion, equipment and operation of the railroad contemplated by this company, as they had been directed to do, and submitted to the board the "articles of agreement" entered into as aforesaid; which said articles of agreement, having been carefully read and considered by this board, on motion of Joel D. Conway the same were ratified and approved and ordered to be signed in duplicate by the president, attested by the secretary, and the corporate seal of this company affixed thereto, said secretary retaining one copy thereof and the said J. D. Beardsley retaining the other.

On motion of Director W. P. Hart, the secretary was ordered to enter said articles of agreement at length upon the records of this company as part of the minutes of this meeting:

Articles of agreement entered into on this 10th day of September, A. D. 1879, by and between the Washington and Hope Railway Company of Hempstead county and the State of Arkansas, party of the first part, and J. D. Beardsley, of Cairo, West Virginia, party of the second part.

The Washington and Hope Railway Company, having constructed a road-bed for a narrow gauge railway from Washington to Hope, in said county of Hempstead and State of Arkansas, and being desirous of having the same completed and operated, to that end hereby agree and contract with J. D. Beardsley, party of the second part, to procure and hold

in trust for him, the said Beardsley, and for such persons as he may associate with him, all of the stock in said Washington and Hope Railway Company, held and owned by any person whomsoever, which said stock shall be held by the board of directors of said Washington and Hope Railway Company in trust for the use and benefit of said J. D. Beardsley and his associates until he shall have completed said Washington and Hope Railway and made the same a first-class narrow gauge railroad, when said stock shall vest absolutely in and become the property of said J. D. Beardsley and his associates or their assignees.

In the meantime, under the conditions hereinafter expressed and until the forfeiture made by said J. D. Beardsley and others according to the conditions hereinafter recited, said trustees shall collect and turn over to said J. D. Beardsley and his associates all of the dividends, issues, and profits upon said stock arising from the operation of said road:

Provided, That in the transfer of said stock a sufficient quantity of stock shall be retained by at least four members of the present board of directors of said Washington and Hope Railway Company to qualify them to hold the position of directors on said company; and provided further, that any of the stockholders may retain their stock by promptly paying up the remainder of said stock.

And it is further agreed that said party of the first part shall procure personal obligations of citizens who, in the opinion of the board of directors, are solvent, obligating themselves to pay to said J. D. Beardsley, the aggregate sum of ten thousand dollars ($10,000), one half of which sum shall be due and payable ten days after said railway shall have been completed, ironed, and accepted by the board of directors as a first-class narrow-gauge railway, which completion shall not be beyond four years from the date hereof, and the other half shall be due and payable one year thereafter.

The said J. D. Beardsley agrees and contracts for himself and his associates and their heirs and assigns that he or they will at once proceed to put upon the road-bed of said Washington and Hope Railway ties suitable for a first-class narrow-gauge railway, said ties to be either of white or post oak timber and not less than — feet long and not less than — inches in width and not less than — inches in thickness, and to be laid not more than — inches from center to center of said ties on an average, and that he or they will put wooden rails upon the same and securely spike them to said ties and will use all possible diligence in getting said road ready for the transportation of freight and passengers.

He also undertakes and obligates himself and others as

aforesaid to provide said road with sufficient rolling stock to transfer promptly all freight and passengers offering for transportation, and he guarantees prompt transportation of freight and the transportation of passengers within one hour from Washington to Hope or from Hope to Washington, inclusive of necessary stoppages, and he further obligates himself to run at least one passenger car daily each way in close connection with the passenger trains on the St. Louis, Iron Mountain and Southern Railway.

Said J. D. Beardsley further obligates himself as aforesaid to construct proper crossings, according to law, at all points where public roads shall cross the line of said Washington and Hope Railway, and to build a depot building at Washington sufficient for the storage and safe keeping of all freight committed to the care of said road; and, further, that said J. D. Beardsley and his associates shall be answerable and responsible to all persons who may sustain damage from any cause whatever arising out of the operation and running of said railway, whether operated by steam or otherwise.

It is, however, distinctly understood and agreed by and between the parties hereto that the putting down of wooden rails is a temporary arrangement, and that said wooden rails shall be replaced with iron rails of not less than twenty pounds weight per yard, and that said J. D. Beardsley hereby covenants and agrees to replace said wooden rails as rapidly with iron rails as aforesaid.

It is believed that this may be done in two years from the date of this contract, but if the said party of the second part should find it impracticable to iron the whole of said road within two years the party of the first part agrees that if one-third of the same is laid with iron rails within two years from the date of this contract that then, at the end of said two years, the said party of the first part will grant an extension of one year to said J. D. Beardsley, and if, at the expiration of three years two-thirds of said road shall be laid with iron as aforesaid the party of the first part shall grant the party of the second part another extension of time for one year, in which time said road shall be completed with iron as aforesaid, with all necessary switches, turn-tables, depots, etc., and shall be equipped with one good six-ton locomotive and cars necessary to transport all freight offering for transportation with promptness, and also at least one good passenger coach for the transportation of passengers, and that at least one passenger train shall be run each way each day in close connection with the passenger trains on the St. Louis, Iron Mountain and Southern Railway. It is also distinctly understood and agreed between the parties hereto that

if at the expiration of two years from the date of this contract said J. D. Beardsley and others shall have failed to iron one-third of said road as above provided, then and in that event it shall be at the option of said party of the first part to declare this contract at an end and without further notice to take immediate possession of said road and equipments, and by said forfeiture all the property and estate which said J. D. Beardsley and others may have acquired in said road by virtue of this contract shall revest in and become the absolute property of said company as originally organized, and if at the end of three years from this date two-thirds of said road shall not have been ironed as hereinbefore provided, then it shall be at the option of the party of the first part to declare this contract at an end, and all the rights and property of said J. D. Beardsley and others shall vest absolutely in and become the property of said party of the first part as originally organized, and they may take possession of the same without notice to said Beardsley and his associates, and if at the end of four years from the date hereof the said party of the second part shall not have completed the entire length of said road, with iron rails, switches, turn-tables, depots, rolling stock, and other equipments, as hereinbefore provided, as a first-class narrow-gauge railway it shall be at the option of party of first part to declare this contract at an end, and they may without further notice take possession of said railway, and all the property, rights, and estate which said party of the second part may have acquired by virtue of this contract shall vest in and become the absolute estate of the party of the first part as originally organized: *Provided*, however, and it is hereby distinctly understood and agreed, that said party of the second part shall have the right forthwith and shall remove the iron rails, spikes, and locomotive, if there be one, from said railway; but should the said party of the first part desire to purchase said iron and locomotive they shall have the right to take the same at the then market value of such iron and spikes and the freight thereon, and for the locomotive, if there be one, at the maker's price at the time, less a fair allowance for use and wear, and if said prices cannot be agreed upon they shall be ascertained by arbitration.

And the party of the second part further covenants and agrees that in the event of his failure to put down the rails as fast as hereinbefore provided he will not attempt to prevent or obstruct the parties of the first part in taking possession of the road and rolling stock, and that he will not construe the title to the iron and locomotive to justify him in holding the road or delaying the delivery thereof, but that if the parties of the first part should not wish to purchase said iron, spikes and

locomotive, then that he will remove said iron and locomotive, if there be one, within one week after receiving notice so to do, leaving the road-bed and ties and wooden rails and all other rolling stock still upon said road and in good condition.

In testimony whereof W. H. Carruth, as president of the Washington and Hope Railway Company, and Robert B. Williams, as secretary of the same, have, by order of the board of directors of said company, hereunto set their hands and affixed the seal of said company on the part of the party of the first part, and J. D. Beardsley, for himself and those he may associate with him, has hereunto set his hand and private seal on the part of the party of the second part.

Signed and sealed in triplicate on this the day and date first above written, at Washington, Ark.

W. H. CARRUTH,
President W. & H. Ry. Co.

Attest: R. B. WILLIAMS,
[SEAL.] *Secretary W. & H. Ry. Co.*

J. D. BEARDSLEY. [SEAL.]

On motion of Director Joel B. Conway, the board adjourned, subject to the call of the president.

W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

Exhibit "H" is as follows:

WASHINGTON, ARK., *May 22, 1883.*

On this day the board of directors of the Arkansas and Louisiana Railway Company *held* at the office of said company, in the Town of Washington, in the County of Hempstead, in the State of Arkansas.

Present—W. H. Carruth, president; A. B. Williams, J. K. Jones, Thomas H. Simms, J. D. Conway, H. B. Holman, P. F. Beardsley, W. P. Hart and R. B. Williams, directors.

On motion of Director James K. Jones, the following resolution was adopted:

Resolved, That the company enter into a contract with J. D. Beardsley for the construction of the line of railroad proposed to be constructed; and the following contract was submitted for the action of the board, to wit:

Memorandum of a contract made at Washington, Ark., on the 22d day of May, in the year 1883, between J. D. Beardsley, of Washington, Ark., of the first part, and the Arkansas and Louisiana Railway Company, a corporation created and existing under the laws of the State of Arkansas, of the second part, witnesseth:

Whereas, The said J. D. Beardsley, under an agreement with the Arkansas and Indian Territory Railway Company, has

changed the gauge of ten miles of road between Hope, on the St. Louis and Iron Mountain Railway, and the Town of Washington, to a standard gauge, and relayed the same with fifty-six pound and sixty pound iron rail, and has replaced most of the narrow gauge ties with good standard gauge ties, which ties, with all the iron rails, fastenings, spikes, etc., he has furnished, and he has also constructed for the said Arkansas and Indian Territory Railway about three and a half miles of new road-bed between Hope and Washington, and some seven or eight miles of new road-bed northwest of Washington, and has laid, surfaced and finished about three miles of new road northwest of Washington, using thereon good and sufficient standard gauge ties and an iron rail of fifty-six pounds or sixty pounds to the yard, which ties, rails, with the spikes and fastenings, etc., the said J. D. Beardsley has furnished; on account of this and other work done and this and other material furnished, the said Arkansas and Indian Territory Railway Company has delivered to said J. D. Beardsley fifty of its first mortgage bonds for the sum of one thousand dollars each, and all the balance for all work done and for all material furnished by the said J. D. Beardsley for the said Arkansas and Indian Territory Railway Company is yet due and unpaid; and,

Whereas, By deed dated May 17, 1883, the Arkansas and Louisiana Railway Company purchased and acquired the said Arkansas and Indian Territory Railway, together with its franchises, rights, privileges and all its property, real and personal, and it was a condition of the said purchase that the said Arkansas and Louisiana Railway Company should assume and pay all legal debts and liabilities, to discharge all obligations of the Arkansas and Indian Territory Railway; and,

Whereas, The said Arkansas and Louisiana Railway Company has authorized an issue—its stock to an amount equal to twenty thousand dollars per mile for the entire length of its projected road, from the line of the State of Louisiana to the line of the Indian Territory, and has authorized an issue of bonds to an extent of fifteen thousand dollars per mile for the entire length of its road as aforesaid, which bonds are to bear interest at the rate of 5 per cent and are to be secured by first mortgage on the road, road-bed, and all the property and franchises of the company; and the Arkansas and Louisiana Railway Company has authorized and directed its president and secretary to contract for the construction of its said road, paying therefor, if possible, in the stock and bonds aforesaid, all of which will appear by reference to records of the company. Now, therefore, this contract is made. The said J. D. Beardsley, for the payments and considerations hereinafter set forth and expressly, covenants, undertakes and agrees as follows:

He is to replace all the narrow gauge ties remaining in the road between Hope and Washington with good standard gauge ties and put the road in good order for business. He also undertakes to proceed at once to grade, build and complete a section of the road from Washington northwest, a distance of from fifteen to twenty-five miles, to such point as may be designated on the present location or an extension of it. He is to procure at his own cost good ties of white or post oak, to be eight feet long and not less than six inches thick, and to put on the same iron rails not less than fifty-six pounds to the yard, and equal in quality to the rails now laid upon that portion of the road now under iron.

He is to furnish spikes, fastenings, and all necessary materials, and lay the road, align and ballast it, and finish it in good condition for traffic. He is also to grade and construct all necessary sidings, using upon them the same kind of iron and ties and putting them in as good condition as the main track, and he is to build and finish at each station a good and acceptable depot building, which is to become the property of the company; and, in addition to the before-mentioned undertakings, he agrees to return to the Arkansas and Louisiana Railway Company, for cancellation, the fifty bonds of the denomination of one thousand dollars each heretofore paid him by the Arkansas and Indian Territory Railway Company on account, and cause to be cancelled the mortgage heretofore made by the Arkansas and Indian Territory Railway Company on its road-bed, road, franchises, etc., to the end that the mortgage to be made by the Arkansas and Louisiana Railway Company may be a first lien upon the entire road and road-bed from the line of the Indian Territory to the line of the State of Louisiana.

The said J. D. Beardsley further covenants and agrees that he will continue to construct and finish the road which it is proposed to build in the State of Arkansas under the charter of the Arkansas and Louisiana Railway Company, or under the charter acquired by the purchase of the Arkansas and Indian Territory Railway Company, as fast as the company may desire him to do so, furnishing the road in good condition for traffic, and putting up at each station good and sufficient depot buildings, and building all necessary buildings, bridges culverts and cattle gaps, but it is not intended to include round-houses or machine shops as necessary buildings.

For the performance of this contract by the said J. D. Beardsley, the Arkansas and Louisiana Railway Company agree to pay him as follows: For the work done in changing the gauge of the road from Hope to Washington and changing the road-bed and constructing three and one-half miles of

new road-bed southeast of Washington and in full for all material furnished and for all work done for the Arkansas and Indian Territory Railway Company southeast of Washington, including the new depot at Washington and the siding at Washington, and also for the surrender of the fifty bonds of the denomination of one thousand dollars each for cancellation, heretofore paid to him by the Arkansas and Indian Territory Railway Company, he is to have—

First. All the lands granted by the State of Arkansas to the Washington and Hope Railway Company or that may hereafter be conveyed *with* the law for that purpose, approved March 5th, 1879, entitled "An act to be entitled an act to donate certain lands to the Washington and Hope Railway Company."

Second. He is to have all the light rails, spikes, bolts and fastenings that were used upon the narrow gauge road-bed of the Washington and Hope Railway, and also all the rolling-stock and personal property of all kinds acquired by the Arkansas and Indian Territory Railway Company by purchase of the Washington and Hope Railway Company, and by that company sold to the Arkansas and Louisiana Railway Company, subject, however, to the payment of whatsoever balance may be due the St. Louis Iron and Bolt Company, of St. Louis, on account of the purchase of material by the Washington and Hope Railway Company.

Third. The Arkansas and Louisana Railway Company shall deliver to the said J. D. Beardsley the sum of one hundred thousand dollars par value—the paid-up capital stock of this company, and the further sum of one hundred and fifty thousand dollars of the first-mortgage bonds of this company. All these payments are declared to be now due, and when paid will be in full for the work done between Washington and Hope, including depot, sidings, and the surrender for cancellation of the fifty bonds of one thousand dollars each of the Arkansas and Indian Territory Railway Company, as hereinbefore provided.

For the construction of the road in the State of Arkansas of which it is agreed he shall construct, he is to receive for every mile of road constructed and finished, including bridges, culverts, cattle gaps and the necessary sidings, twenty thousand dollars of the paid-up capital stock of the Arkansas and Louisiana Railway Company, and fifteen thousand dollars of the first-mortgage bonds of the Arkansas and Louisiana Railway Company, being an aggregate in stock and bonds of thirty-five thousand dollars ($35,000) per mile. It is also declared that upon the completion and acceptance of each mile of road in good condition for traffic, as hereinbefore provided,

the said J. D. Beardsley shall be entitled to demand, and the president and secretary shall issue him paid-up certificates for twenty thousand dollars of the stock of the Arkansas and Louisiana Railway Company, and upon the completion of each section of five or more miles and its acceptance, as hereinafter provided, the president and secretary shall issue to him, upon his request, the sum of seventy-five thousand dollars in the first mortgage bonds of this company, which will be, as above provided, a sum in stock and bonds equal to thirty-five thousand dollars per mile.

As a further consideration for the performance of his undertaking hereinbefore set forth, the Arkansas and Louisiana Railway Company covenant and agree that—the term occupied in the construction of this road in the State of Arkansas, not to exceed five years from the signing of this contract, the said J. D. Beardsley shall have the entire, complete, and exclusive right and use and control of the road, road-bed, switches, depots, and all the property of this company, both for the purpose of constructing and traffic, and shall be entitled to collect and receive for his own use and benefit all earnings, revenues, and profits arising out of its use and from any and all sources connected with it, and this use is to be free of all rent and charges.

For the purpose of settling any question or dispute which may arise under this contract between the parties hereto, and to provide for the examination and acceptance of the road as constructed under the contract, it is agreed by both parties hereto that a committee of three persons shall be formed, as follows: The president of the Arkansas and Louisiana Railway Company shall appoint two persons and J. D. Beardsley shall name one person. If these persons shall accept the appointment, the secretary shall make it of record upon the books of the company, and shall furnish a certified copy of such record to J. D. Beardsley. The decision of this committee, or of any two of them, upon any question which may arise under this contract shall be final and beyond appeal as to the parties hereto. It shall be the duty of this committee, or any two of them, upon request of either of the parties hereto, to examine the road as constructed, in sections of not less than one mile, and, if they find the same in good condition for traffic, they are to accept it, making the acceptance in writing, in duplicate, and signed by at least two of the committee. Each of the parties hereto shall be entitled to a copy of this acceptance, and upon receipt of such acceptance, signed as above, and upon request of J. D. Beardsley, it is made the duty of the president and secretary of the company to issue at once, without any delay, the paid-up certificates of stock for

sections of one mile or more, and the first-mortgage bonds, as heretofore provided, for sections of five miles or more.

In case of the death, removal or resignation of a member of the committee, his place may be supplied by the party who appointed him, and the secretary shall make record of the change, as provided for—the original appointment, and all the duties and powers of the original members shall devolve upon their successors.

It is agreed that this contract may be modified, changed or amended only by the agreement of both parties hereto in writing, under seal, either indorsed hereon or made a supplementary contract.

It is also understood that this contract is made subject to the approval and ratification of the directory of the Arkansas and Louisiana Railway Company, which approval, if made, is to be of record and a certified copy of such record hereon indorsed by the secretary of the company, properly attested.

It is also agreed that said J. D. Beardsley may associate with himself other parties under this contract, and may assign to them such interest as he may think proper, and the Arkansas and Louisiana Railway Company, upon proper notice of such assignment and proper evidence that it is made in good faith, will recognize it and consider the party to whom such assignment is made as a principal under it.

[SEAL.] In witness whereof, the said J. D. Beardsley has hereunto set his hand and seal on the day and year above written, and the Arkansas and Louisiana Railway Company has caused these presents to be signed by its president and its secretary and its corporate seal to be hereto affixed.

J. D. BEARDSLEY. [SEAL.]

ARKANSAS AND LOUISIANA RAILWAY COMPANY,

By W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS,

Secretary Ark. & La. Ry. Co.

Which said contract, having been read and carefully considered, was by the board unanimously adopted and the president and secretary of this company directed to execute the same and to issue to J. D. Beardsley the stock and bonds at the times and in the manner provided in said contract. Thereupon W. H. Carruth, president, appointed on behalf of the Arkansas and Louisiana Railway Company Messrs. Henry B. Holman and A. B. Williams as members of the commirtee to inspect and receive the road as constructed and to adjust and decide any questions that may be in dispute between the parties to the contract this day entered into with J. D. Beardsley for the construction of the road, and J. D. Beardsley on his

part appointed W. H. Carruth as a member of said committee, as provided in said contract.

These gentlemen having accepted the appointment as members of such committee, on motion of J. D. Conway the appointment of H. B. Holman, A. B. Williams and W. H. Carruth was unanimously approved.

And, on motion of H. B. Holman, the meeting adjourned.

W. H. CARRUTH, *President.*

Attest: R. B. WILLIAMS, *Secretary.*

Indorsed as follows: For and in consideration of the sum of five dollars to me in hand paid by George C. Smith, the receipt of which is hereby acknowledged, I, John D. Beardsley, have this day in good faith sold, assigned and transferred to the said George C. Smith an equal, undivided one-half interest in and to the foregoing contract, and for the consideration aforesaid I do hereby agree to share with the said George C. Smith all and every the benefits and compensation named in said contract, hereby associating the said George C. Smith with me as a principal party in and to said contract. In witness whereof I have hereunto set my hand this the 4th day of August, 1883. Signed, J. D. Beardsley.

UNDISPUTED FACTS.

THE FOLLOWING FACTS ARE CHARGED IN THE BILL AND ADMITTED IN APPELLANT'S ANSWER:

1. The Washington and Hope Tramway Company was duly organized as a corporation under the laws of Arkansas, with a power reserved to change into a railway corporation when deemed advisable by the stockholders.

Ib., pp. 1 and 37.

2. The change of said tramway into a railway corporation known as the Washington and Hope Railway Company.

Ib., pp. 2 and 37.

3. The donation by the State of Arkansas, through its General Assembly, of certain lands, about 20.000 acres, to the Washington and Hope Railway Company.

Ib., pp. 4 and 48, 49, 51, 53, 54, 57, 65.

4. The Washington and Hope Railway Company, on the 10th day of September, 1879, entered into a contract with appellant, John D. Beardsley, acting for himself, and one Vinton Alderman, by which it obligated itself, in consideration that he and such other persons as he might appoint with him, would complete and equip with iron, locomotives, passenger and freight cars, etc., the said railway, then partly constructed, and within a time mentioned in said contract, that it would procure and deliver to him, for himself and such associates,

all the stock of said railway company, except a sufficient quantity to be retained by at least four members of the then existing board of directors, to qualify them to hold the position of directors of said company; and would also in the meantime collect and turn over to him and his associates all of the dividends, issues and profits upon said stock, arising from the operation of said road; and would also procure personal obligations of citizens who, in the opinion of the board of directors, were solvent, obligating themselves to pay to him the aggregate sum of $10,000, one-half of which should be paid ten days after the railroad had been completed, ironed and accepted by the board of directors as a first class narrow gauge railway, and the other half one year thereafter.

Ib., pp. 58-61.

5. That in pursuance of said contract, appellant, with Vinton Alderman as his associate, holding equal interest in the enterprise, completed and equipped the Washington and Hope Railway as a narrow gauge railroad from Washington to Hope, and the same was accepted by the board of directors, as a compliance with said contract by a resolution as of date January 1, 1881.

Ib., pp. 38, 39 and 62.

6. In the latter part of the year 1881, said road being in debt, and the earnings thereof being at the time very light, the said Vinton Alderman became anxious to sell his entire interest in the enterprise, and appellant became the purchaser thereof for the sum of $12,000 on a credit.

Ib., pp. 5 and 39.

7. As per agreement between appellant and appellee, appellant being the owner of all the stock of the Washington and Hope Railway Company, sold to appellee one-third thereof, and on January 1, 1882, executed and delivered to him the "memorandum," or declaration of a trust, set forth in the bill, and found on *page 6, of the Transcript of Record*, as evidence of appellee's equitable title to the same.

Ib., pp. 6 and 41.

8. In the summer of 1882 the Washington and Hope Railway Company being without resources to enable it to extend its road and widen the gauge thereof, and ascertaining that the St. Louis, Iron Mountain and Southern Railway Company would furnish the necessary aid for that purpose, determined at once to proceed with such work.

Ib., pp. 7 and 42.

9. In furtherance of this purpose the Arkansas and Indian Territory, and the Arkansas and Louisiana Railway Companies, were organized on the 13th day of September, 1882; and on the 18th day of September, 1882, the Washington and Hope

Railway Company sold all of its property and franchise to the Arkansas and Indian Territory Railway Company; and on the 17th day of May, 1883, the last named corporation sold all of its property and franchise to the Arkansas and Louisiana Railway Company. (*Ib., pp. 2–4, 37, 48, 54, 64.*) In these sales the stockholders of the vendor corporation, the Washington and Hope Railway Company, were to have stock in each of the successive vendee corporations in the proportion of their interest and stock in said vendor corporation, to wit: Appellant 400 shares, and appellee 200 shares.

Ib., pp. 37, 38 and 25 and 27.

10. Appellant, owning a majority of the stock of each of said railway companies, had and exercised the power of electing the board of directors, composed of such men as suited him, and he at all times exercised control of the operations and transactions of said corporations, including the negotiations for money and material for equipping and extending them and each of them.

Ib., pp. 15 and 46.

11. On the 22d day of May, 1883, the construction contract, exhibited with appellant's answer as Exhibit H, *on pp. 63–67 of Transcript of Record*, and mentioned in the bill, *on pp. 7 and 8*, was executed. Said contract provides for the issue of additional stock at $10,000 per mile on that part of the line between Washington and Hope, and for $20,000 per mile on the residue of the road, and for first mortgage bonds at $15,000 per mile, to be issued and delivered as the work was completed in sections of five miles.

Ib., pp. 42 and 43 and 63–67.

By hypothecation of the [redacted] bonds of the Arkansas and Louisiana Railway Company money and materials which had been obtained from the St. Louis, Iron Mountain and Southern Railway Company, with which said Arkansas and Louisiana Railway was extended to Nashville, its gauge widened from Hope to Washington and its track ironed with a heavy and better quality of iron. (*Ib., p. 43.* [illegible] *pp. 157–161.*)

THE MONEY WHICH BUILT THE WASHINGTON AND HOPE RAILWAY DID NOT COME FROM APPELLANT.

The evidence shows that at the time appellant and Alderman bought the Washington and Hope Railway he was a man of but little, if any, capital; and that but for the $11,000 expended by the citizens of Hempstead County in grading and building the road bed, the 20,000 acres of land donated to the corporation, and the $10,000 of bonus notes, which were payable to the corporation, executed by citizens of said county, he and

Alderman could not have fulfilled their contract with said corporation to build the narrow gauge railroad from Washington to Hope.

See—

Trans. of Record, pp. 60, 120, 121 and 122.

APPELLANT AND ALDERMAN, BY THEIR CONTRACT, BECAME EQUAL OWNERS, AS TENANTS IN COMMON.

That appellant and Alderman were equal owners, as tenants in common of the Washington and Hope Railway and all of its stock and property, the directors being merely nominal stockholders with no beneficial interest, is shown by both the pleadings and evidence.

Trans. of Record, pp. 38, 46, 92, 108, 130, 221, 225 and 226.

THE SALE OF ALDERMAN IN 1881 SETTLED ALL MATTERS BETWEEN THE APPELLANT AND HIM, LEAVING APPELLANT OWNER OF THE WHOLE PROPERTY.

That they were to have a settlement after the completion of the road to equalize their outlays and interests in the enterprise, and that such settlement was made in the latter part of 1881, by the purchase of Alderman's interest by appellant for $12,000 on an indefinite credit, and which was in full settlement of all matters between them, is shown by the evidence of appellant and Alderman.

Trans. of Record, pp. 130, 260, 263.

That all of the property and values of the Washington and Hope Railway Company were evidenced by the $100,000 of its stock, all of which was issued to appellant, who held one-half thereof as trustee for Alderman, is also shown by his testimony.

Trans. of Record 130.

See—

Pierce on Railroads, 111.
Field on Corp., 110.

The effect of the transactions between him and Alderman was to create an express trust, and the proof of it is in the appellant's answer in this case and his letter to Alderman, which, though written some time after, relate back to the date of its creation.

Perry on Trust, Vol. 1, sec. 82.

Citing—

McGovern v. Knox, 21 Ohio St., 547.
Steere v. Steere, 5 John. Ch., 1.
Noble v. Morris, 24 Ind., 478.
McLaurie v. Portland, 53 Ill., 540.

If not an express it was certainly a resulting trust.

McMurry v. Mobly, 39 Ark., 312.
Collins v. Rainy, 42 Ark., 535.
34 Amer. Decisions, 664.

THE STOCK WAS SOLD TO APPELLEE AFTER THE SETTLEMENT WITH ALDERMAN, AND APPELLANT BECAME TRUSTEE IN AN EXPRESS TRUST FOR APPELLEE.

Shortly after the purchase of Alderman's stock, which was then of but little value, appellant sold appellee two-thirds of the interest he had purchased from Alderman, or an amount equal to one-third of the entire stock.

Transcript of Record, pp. 76, 77, 89.

But appellant insisted, in argument in the Circuit Court, "that it was only a conditional sale, or a mere agreement to sell;" and appellee that it was an absolute sale, the vendor reserving possession as a security for the purchase money, and, by his consent, for greater convenience in accomplishing their ultimate joint purpose, never supposing that his claim would be disputed.

Where is the evidence to support the contention that it was a conditional sale, or a mere agreement to sell?

No witness, save appellant, says aught that bears the slightest resemblance even to an intimation that will support his contention, and he contradicts himself several times during the course of the trial about the real nature of the transaction.

If his contention be correct, why, according to his own evidence, did he within twenty-four hours after the trade was made, execute and deliver the declaration of trust? (Trans., p. 133, 134.) Why, in an instrument written by his own hand, using words dictated by his own brain, with no one by to even suggest a word, use the words, "*hold* of the stock * * * which is *sold* to Paul F. Beardsley," and why be so particular as to say "which, though standing in my name, *belongs* to him?" Why the particularity to express his claim upon it in the words "subject to a payment of $8000?" Why the particularity in expressing the rate of intererest, and the date of its commencement, to correspond with his purchase of the same from Alderman?

The words *hold, sold and belongs*, indicate, by all known rules of grammatical construction of the English language, a present interest—not one to be acquired by some future act.

Why *soon* after the execution and delivery of the declaration of trust, did he tell his confidential friend and adviser, Caruth, that he had sold one-third of the stock to appellee for a consideration of $8000?

Trans., p. 92.

Why did he, when the work of extending the road had reached Ozan Station between Washington and Nashville, when Paul F. and he were both expending their energies in such work, tell J. G. Yowell that he had "sold one third of the road to appellee," and again, in 1883 or 1884, in his office at Nashville, repeat the same thing, and explain that he had "builded better than he knew" when he sold or gave Paul one-third of the road?

Trans., pp. 110, 111.

Rector tells of similar declarations by him.

Trans., pp. 112, 113.

Why did he tell John Bell that Paul had an interest?

Tr., pp. 113, 114.

And last, but by no means least, why, in his letter, written after their disputes arose, which gave rise to the suit, does he say: "After I had purchased this interest (referring to his purchase from Alderman) you importuned me to let you have *it*. *This* I declined to do, but I finally consented to let you have two-thirds of the purchase, you to pay me $8000 with interest from time of my purchase, and at same rate I paid Alderman; stock to remain in my hands until paid for.

* * * * *

"*Some time afterwards* (in his depositions he says the night after the trade was made) knowing that as our *understanding* was purely verbal, you would have no rights whatever in case of my death, I made a written memorandum showing that you were entitled to one-third of the stock then standing in my name, subject, however, to a payment of $8000, with interest as aforesaid. * * * This memorandum I gave you, and I presume you still have it. Here the business part of our transaction, so far as interest in the property is concerned, rests."

Tr., p. 89.

This letter shows that appellant's memory is much better than some parts of the record of this cause would indicate, for he seems to have had a very accurate memory of the contents of a little slip of paper which he had written and delivered four years preceding the date of this letter. And, if there were no other evidence in this case, this letter would conclusively prove that he, at the time he executed and delivered the declaration of trust in January, 1882, understood, as did appellee, that by verbal contract between them the day before, he had sold for $8000 the stock to appellee, and that there were no conditions attached to the sale, save that he should hold the stock as security for the payment of the contract price.

There was no more consideration moving from appellant to Alderman when he purchased the latter's one-half interest in

the stock, than from appellee to appellant when he became the purchaser. The consideration in each case was a promise, which is binding in this State, to pay a certain amount of money at a future date, and if the one is binding so is the other. The legal title of that portion of the stock was not changed by either transaction. The appellant held the legal title before his purchase from Alderman, as trustee for him, and after the sale to appellee as trustee for him. And while the payment was to be made *in the future*, that did not prevent the equitable title from vesting in the appellee at once.

Par. on Con., vol. 1, pp. 519–537.

"The rule that the contract of sale passes the property immediately, before payment or change of possession, has been universally recognized in the United States."

Benj. on Sales, p. 329.
Bissell v. Balcom, 39 N. Y., 279.
Willis v. Willis, 6 Dana (Ky.), 148.

The equitable title then vested in appellee about January 1, 1882, by the contract between the parties, and the appellant, as the holder of the legal title, converted himself into a trustee by making the declaration of trust based upon not only a *good* but a *valuable* consideration.

1 Perry on Trusts, secs. 82, 83.
Lewin on Trusts, 62.
Bibb v. Hunter, 79 Ala., 351.
Packard v. Putnam, 57 N. H., 43.
Willard v. Willard, 56 Pa. St., 119.

"A voluntary trust, if perfectly created, is good and valid, and it is immaterial that no valid consideration induced its creation," is the language of the court in *Caldwell's App. (Pa.) 5 Cent. R., 860.*

"The owner of personal property may impress upon it a present valid trust, either by a declaration that it is held in trust, or by a transfer of the legal title to a third party, upon certain specified trusts; *and if the owner makes himself trustee no transfer of the subject matter of the trust is necessary.*"

Dickinson's App. (Pa.), 6 Cent. R., 412.

By statute of Arkansas, relating to railroads, the stock in such corporations is made personal property.

Mansf. Dig., sec. 5436.

THE TRANSACTION ALSO CREATED THE RELATION OF PLEDGOR AND PLEDGEE. As is said in the opinion of the learned Circuit Judge: "The stock remained in the hands of the defendant (appellant) as a pledge for the price. The delivery of the stock to the purchaser, and its redelivery to the seller, is not necessary to create this relation."

Calbrook on Coll., Securities, sec. 306.

NEARLY ALL OF THE MONEY AND MATERIAL FURNISHED BY THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY TO AID IN IMPROVING AND EXTENDING THE ROAD, WAS FURNISHED TO THE WASHINGTON AND HOPE RAILWAY COMPANY BEFORE THE ARKANSAS AND LOUISIANA RAILWAY COMPANY WAS ORGANIZED, AND BEFOBE THE CONSTRUCTION CONTRACT WAS MADE.

The construction contract, upon which appellant relies to divest the interest of appellee in any of the road built or property acquired since its execution was made, 22d of May, 1883; but the record discloses indubitable evidence that a large amount of material and money had been advanced by the St. Louis, Iron Mountain and Southern Railway Company upon the faith and credit of the Washington and Hope Railway Company, before the organization of the Arkansas and Louisiana Railway, to enable it to broaden its gauge, and improve and extend its tract. Beginning in July and including dates to December 31, 1882, it had furnished upon such faith and credit $40,000 in money, and $54,145 03 in material, making an aggregate of $94,145.03.

Trans., p. 222.

The record shows that the total amount due upon settlement made July 1, 1885, with the St. Louis, Iron Mountain and Southern Railway Company, was only $119,609.57, including interest, amounting to $14,226.68.

Trans., pp. 222, 223.

Thus showing appellants pretense that the advances for purposes of extension and improvements were obtained under the construction contract of May 22, 1883, is utterly without foundation.

AND THERE HAD CERTAINLY BEEN NO CHANGE OF THE INTEREST OWNED BY EACH TO MAY 22, 1883, AND APPELLANT CONCEDED BY WORDS AND ACTS, THAT APPELLEE WAS OWNER OF ONE-THIRD OF THE WHOLE PROPERTY, BOTH BEFORE AND AFTER THE CONSTRUCTION WAS MADE.

Certainly to the 22d of May, 1883, the date of the construction contract, there had been no change in the respective interests of appellant and appellee in the stock and property of either of the corporations organized, and appellant always regarded and treated his brother as an equitable owner of one-third of the whole. If not, why did he in the Articles of Association of the Arkansas and Indian Territory Railway Company, which was the immediate successor to the Washington and Hope Railway, name appellee as the owner of $20,000, and himself of $40,000 of stock? And in the Articles of Association of the Arkansas and Louisiana Railway Company, the successor to the Arkansas and Indian

Territory Railway, why did he name the appellee as the owner of $20,000, and himself of $40,000 of stock? This was done by *him*, for the record shows that whatever he directed was done, the board of directors having no beneficial interest in either of the corporations, and the appellee reposing in him such confidence as to never doubt his motives or question his judgment. And that both of these corporations were organized only in furtherance of the projects of the Washington and Hope, and are substantially the same corporation under a different name, is shown by the records with equal clearness. More than this, the record shows that asper their contract and understanding, appellant and appellee were to have in each succeeding corporation interests in proportion to interest in the vendor corporation, as we have already shown herein.

And just here it is perhaps well to direct the court's attention to the statute law of Arkansas which authorizes railroad corporations to sell their franchise and property of every kind, and which reads thus:

"The purchasers of any railroad at a judicial sale under any mortgage, upon confirmation thereof, or any sale under mortgage or deed of trust that has been or shall be made, or any voluntary sale, shall become possessor of, and shall be entitled to hold, exercise and enjoy all the corporate rights, powers, privileges, immunities, charter and franchises of the company as fully as the same were held, exercised and enjoyed by said company before said sale, and under any name which the purchasers may elect."

Mansfield's Digest, 5448.

"Any railroad company now chartered under existing laws, or which may hereafter become incorporated under this or other laws, shall have power and authority to purchase and hold any connecting railroad or railroads, and operate the same, or to consolidate their companies and make one company, under the name of the companies or any other name."

* * *

Ib., sec. 5452.

REGARDLESS OF APPELLANT'S INTENTIONS THE LAW MAKES HIM A TRUSTEE, AND WILL MAKE HIM ACCOUNT AS SUCH.

The preceding facts afford application for the following principles in equity:

1st. Appellant being a trustee (and surely he will not be allowed to deny the trust in so short a period as a few months after making his written declaration of trust, and while he is still holding the trust property), could not so manage the property by him held in his fiduciary capacity as to divest the interest of his *cestui que trust.*

"It is a well settled principle that no one can be permitted to purchase an interest where he has a duty to perform that is inconsistent with the character of purchaser," is the language of the Supreme Court of Arkansas, citing a long list of authorities in *Wright, Ex., v. Walker, 30 Ark., 48.*

Again, the same court says:

"It has long been the established doctrine of equity that trustees cannot deal with trust property for their own benefit in any manner. * * * Courts of equity, regarding the weaknesses of ordinary men, take from them all temptations by rendering them incapable of purchasing at all."

West and wife v. Waddill, 33 Ark., 587.

"Those who have a duty to perform for others should not, in the discharge of that very duty, deal for themselves."

Howell v. Baker, 4 John., Ch., 120.

"It is a universal rule of equity that one to whose management any business is intrusted, cannot create other relations that will put him in an attitude of hostility to his principal or *cestui que trust,*" is the language of Black, C. J., in *Hill v. Fragin, 22 Penn., 327.*

"The doctrine that trustees * * * can not obtain personal advantage out of their trust is firmly established."

43 Mo., 163.
Wharton, Agency, 232.
59 Mo., 543.
4 Howard, U. S., 553.
Wardell v. R. R. Co., 103 U. S., 658.

2d. That a trustee holding property for himself and a *cestui que trust,* must account to his *cestui que trust* for his proportion of whatever benefits or profits may arise from their joint property. And especially is this true when, as in this case, the *cestui que trust* is as much an active factor in producing such benefits or profits as the trustee.

Hart v. Ten Eyck, 2 John Ch., 76.
Garnis v. Gardiner, 1 Edw. Ch., 128.
White v. Ward and wife, 26 Ark., 445.
Michand v. Girad et al., 4 How., 553.
Utica Ins. Co. v. Lynch, 11 Page Ch., 520.

The language of Justice Story in an opinion of this court is:

"It is a clearly established principle in that (equity) jurisprudence, that whenever the trustee has been guilty of a breach of the trust, and has transferred the property, by sale or otherwise, to any third person, the *cestui que trust* has a full right to follow such property into the hands of such third person, unless he stands in the predicament of a *bona fide* purchaser for a valuable consideration without notice. And if the trustee has

invested the trust property, or its proceeds, in any other property into which it can be distinctly traced, the *cestui que trust* has his election, either to follow the same in the new investment, or to hold the trustee personally liable for the breach of the trust. This right or option of the *cestui que trust* is one which positively and exclusively belongs to him."

Oliver v. Piatt, 3 How., 333, 401.

This court in another opinion says:

"Where a trustee has abused his trust * * * the *cestui que trust* has the option to take the original or the substituted property. * * * The cardinal principle is, that the wrongdoer shall derive no benefit from his wrong. The entire profits belong to the *cestui que trust*, and equity will so mould and apply the remedy as to give them to him."

May v. LeClaire, 11 Wall., 236.

Prevost v. Gratz, 6 Wheat., 505.

And this should be the governing, "cardinal principle," especially in a case where the trustee not only bears close, confidential business relations to the *cestui que trust*, but is also bound to him by such ties of blood as will naturally produce confidence in his fidelity to his trust.

Boney v. Hollingsworth, 23 Ala., 690.

The evidence shows that the real factors which produced the profits or benefits were three, *i. e.*, the labor and skill of the two Beardsleys and the credit given the Washington and Hope Railway, in which they were interested in the ratio of one-third to two thirds.

Will a court of conscience al'ow the greater body to not only, following one of nature's laws, attract the smaller, but absolutely to absorb and extinguish it? That principle may be allowed in the country of the Congo, but not where civilization reigns, and courts are organized to apply legal remedies and protect and enforce equitable rights.

But learned counsel will say that all of these transactions and changes in the corporations and transfers were made with the knowledge of the *cestui qui trust*. So they were, but with the understanding on his part, and under an agreement with appellant, the trustee, that he was to have one-third of all acquisitions and enhanced values, including one-third of the benefits of the construction contract of May 22, 1883. This appears from the deposition of appellee, which constitutes the transcript of the record from pages 75 to 86; and from the conduct of both parties from the time of the beginning of the plans to acquire Alderman's interest to the date of the unfortunate differences growing out of domestic troubles, which culminated in this suit. If such were not true, why did appellant in all of his letters written appellee about the business,

both before and after the construction contract was made, use the words "we," "us" and "our"? Why did he tell Yowell, Rector and Bell, in three or four different conversations, and on dates while the work was in progress to Nashville, in 1883 and 1884, that his brother owned one-third of the road? He certainly referred to the Arkansas and Louisiana Railway for at that time the Washington and Hope had been abandoned and absorbed, and all of its stock cancelled, and $100,000 of stock of the Arkansas and Louisiana Railway issued in lieu of it, as per the agreement of parties; and $100,000 of additional stock issued on that part of the line from Hope to Washington, thus decreasing the value of the $100,000 already issued by one half. Surely no sane man will think that appellee, who, as shown by the record, is a man of considerably more than ordinary capacity, would stand by and passively submit to such changes, so materially affecting his financial interest, without a word of protest, unless it was with the understanding that he was to share in the profits and benefits that would probably arise from the changes.

Appellee in his deposition, and the statement is nowhere denied by the appellant, fully explains the reasons why appellant wanted the construction contract made in his name, and among them says:

"He told me he had withdrawn his name from the directory for the purpose of making a construction contract. He said he had made the contract in his own name, for the reason that he could deal with outside parties more readily, and that he, being an alien, would have the right to carry any litigation that might arise into the federal courts, which he considered a great advantage."

Trans. of Record, p. 78.

We concede, as a proposition of law, that it devolves upon the appellee to show that a trust relation to the property at one time existed, and this he has clearly done, by circumstances, positive evidence and appellant's admissions. The *onus probandi*, where he denies its existence, is then shifted to the trustee, the appellant, to show when and how it ceased. Has he discharged this burden? If so, when, and by what admission of appellee, circumstance or evidence in the record?

See—

Prevost v. Gratz et al., 6 Wheat., 481, 497.

APPELLANT'S CONTENTION THAT APPELLEE BEING A DIRECTOR PRECLUDED HIS PARTICIPATION IN THE FRUITS OF THE CONSTRUCTION CONTRACT.

Feeling that appellee's equitable rights to the interest he claims in this bill, are clearly shown by the record, we approach, with such emotions as are always felt upon the discov-

ery of something unique, appellant's effort to relieve himself of his trust relations to appellee by resigning from the board of directors of the defendant railway company, and having appellee made a director, so that he might enter into the construction contract of May 22, 1883, for his exclusive benefit, but it is worthy of consideration only for its novelty. Yet, while making this contention, he is not willing to concede that appellee was a *bona fide* director. He says he was merely a "*provisional*" director, whatever that means. (*See appellant's deposition at pages 135 and 137 of the Transcript of the Record.*)

It may be conceded that the courts of equity look with great jealousy upon contracts made by directors with their corporations; but how this fact can avail the appellant we are unable to see. By his own admissions he not only assented to and participated in the contract, but actually planned it and resigned from the directory in order to carry it out. The corporation does not complain of it, nor does any other stockholder. He does not contend that he put appellee upon notice, or even intimated to him, that he renounced or intended to renounce his trust and act for himself alone in the contract. If any wrong has been done in the matter, he stands out as the chief wrong-doer; and yet he asks a court of equity not only to sanction his conduct, but to assist him in perpetrating an actual and still greater wrong against appellee. But no wrong was done to anyone. The contract was fair, was carried out in good faith and the fruits of it were accepted by the parties in interest. The railway company, as is shown by the evidence of appellant and of its president, Carruth (*see pp. 137-8-9 and 218 of Transcript*) was hopelessly insolvent and largely in debt, when this contract was made. Such contracts are not absolutely void, even when third parties in interest are not consulted about making them, but are merely voidable at the option of such parties.

Twin Lick Oil Co. v. Marbury, 91 U. S., 587.
Town of Searcy v. Yarnell, 47 Ark., 269.

But, in this case, as the record clearly discloses, the only real parties in interest were the appellant and appellee, the other stockholders having no beneficial interest in the small number of shares of stock held by them. (*See deposition of R. B. Williams, secretary of the company, at pp., 225-6 of Transcript.*) Why then might they not deal with their own property as they saw proper, and why should such dealing for their common good deprive appellee of all benefits in the contract? Especially is this question pertinent when, as in this case, the majority stockholder, the dominating spirit of the enterprise, the controlling genius, is the older brother, whose fidelity and

honesty of purpose were never questioned, and whose motives of wrong (if, *at that time*, any he had,) were never suspected.

THE CONTENTION BY APPELLANT THAT APPELLEE COULD NOT MAINTAIN THIS SUIT BECAUSE OF HIS FAILURE TO TENDER PAYMENT OF THE PRICE OF THE STOCK BEFORE FILING THE BILL, IS NOT WELL TAKEN.

The learned Circuit Judge has so well stated the facts and the law upon this proposition, in his opinion (*at page 269 of the Transcript*), that we quote it entire. He says: "Upon the facts of this case tender of payment of the price of the stock was not necessary before filing the bill, for several reasons:

"First. The money was not due according to the terms of the contract. If it be conceded that the plaintiff's (appellee's) share of the earnings of the road, if they had been applied to that purpose, would have paid the debt, the defendant (appellant) is not helped, because he alone handled and directed the application of all the earnings and he cannot censure the plaintiff or put him in default for his own act.

"Second. That defendant having received all the earnings of the road and appropriated a portion thereof to his own use, the plaintiff was entitled to a credit on his purchase for his share of the earnings appropriated by the defendant, and the amount of such credit could be ascertained only by a bill for an account,

"Third. To a party who declares he will not be bound by a contract, it is not necessary that a tender shonld be made.

"*2d Wharton on Contracts, sec. 995.*

"(See, also *Williams v. Bank, 2 Peters, 96, 102.*)

"It is a general rule that when the tender of performance is necessary to the establishment of any right against another party, the tender is waived or becomes unnecessary when it is reasonably certain that the offer will be refused.

"*Hill v. Exchange Bank, 105 U. S., 319.*

"*Tracey v. Irwin, 18 Wall., 549.*"

THE NINETY-FOURTH EQUITY RULE OF THIS COURT WAS NOT VIOLATED BY APPELLEE IN BRINGING THIS SUIT.

The opinion of the learned Circuit Judge upon this point (*at pp 270–1 of the Transcript*) is conclusive, and we quote it entire. He says:

"The learned counsel for the defendant confessed on the argument that upon the facts it must be held that the defendant holds in trust for the company the legal title to the lands purchased with the money of the company and donated for depots and other purposes, and to the telephone purchased and built with the money of the company.

"But it is contended that the plaintiff, though found to be a stockholder, cannot enforce this trust and compel a conveyance of the legal title to the corporation, and that any suit for that purpose must be brought by the corporation itself.

"Undoubtedly, the general rule is that the company must sue to enforce such trust, but there are exceptions to this rule as well understood as the rule itself, and the case at bar falls exactly within one of these exceptions. It is well settled that a stockholder may enforce in favor of the corporation such a trust as is here conceded to exist, where the defendant holds a majority of the stock and has control of the corporation. An appeal to this corporation to enforce this trust against the defendant would have been nowise different from an appeal to him to sue himself. When, as in this case, the corporation is under the control of the party to be proceeded against, its refusal to bring suit may be inferred, and a stockholder may maintain the suit without alleging or proving any demand or express refusal.

"*3d Pomeroy Eq. Jur., sec. 1095, and note 1.*

"*Heath v. Erie Ry., 8 Blatch, 347.*

"*Wood's Field on Cor., sec. 369.*

"(See, also, *Cook on Stockholders, sec. 695, and note 1.*)

"When the jurisdiction of a federal court is invoked for the protection of the corporation by a stockholder suing in that court, in virtue of his citizenship, in a case in which the corporation itself could not sue in that court, the bill and proofs must show clearly that a demand on the corporation to sue would be useless, or that the corporation expressly or by necessary implication refused to sue, and that the alleged refusal is real and not a mere sham and device to transfer the litigation into the federal courts through the agency of a non-resident stockholder.

"*Hawes v. Oakland, 104 U. S., 450.*

"In the case last cited stringent rules are laid down to prevent collusion between the corporation and its stockholders to commit what may be termed a fraud on the jurisdiction of the federal courts. Such a purpose is required to be negatived very fully by exact and specific allegations which are not demanded for any other purpose.

"*3 Pomeroy Eq. Jur., sec. 1095, note 1.*

"In the case at bar the facts preclude any suggestion of collusion or an effort to work into the federal court a case not within its jurisdiction. The alienage of the defendant gives the court jurisdiction. The enforcement of the company's right to these lands is an incident rather than the main design of the suit, the chief purpose of which is to establish and enforce a trust against the defendant in favor of the plaintiff, the

value of which would be lessened unless the right of the corporation to this property was also established, and which it was obvious never would or could be done by any other person than the plantiff, who is the only person interested in enforcing the right."

Moreover, we may add, no objection to the bill on this account, either by demurrer or plea, or in argument, was made in the Circuit Court—the only objection of counsel being based upon the general rule that a stockholder must first make demand upon the corporation to sue before exercising the right himself, and this objection was made in argument only. The bill contains, substantially, every requisite of the rule, even if this were a case within it; but, as is said by the learned Circuit Judge, *supra*, "the facts preclude any suggestion of collusion or an effort to work into the federal court a case not within its jurisdiction. *The alienage of the defendant* (appellant) *gives the court jurisdiction.*"

THE ACCOUNT.

The appellant's counsel having failed to furnish us a copy of his brief, and, realizing that the cause will be reached upon the calendar of this court within a week or ten days, and being anxious to avoid delay in the submission, we have prepared this brief without knowing whether any claim will be made in this court that the account was improperly stated by the Special Master. Upon that matter we submit that, if any error were made by the Special Master, it was in his failure to give credit to appellee for the items and amounts indicated in his exceptions to the report; and, if any error were committed by the Circuit Court in this matter, it was in its refusal to sustain those exceptions; but no appeal having been taken by appellee, he can claim nothing on that account. It certainly cannot be claimed by appellant that the Special Master was unfriendly to him, or was actuated by any but honest and proper motives in stating the account, for in the record he appears as one of the directors made by appellant in all of the corporations, and moreover as one of the sureties on his *supersedeas* bond in this appeal.

The Master was appointed at the instance of appellant, because of his dissatisfaction with the account as stated by the court, and was appointed on account of his experience, skill and reputation as a competent and accurate accountant; he having had extensive experience in adjusting and stating large and complicated accounts, among others the one involving the transactions between the State of Arkansas and its Treasurer in the celebrated Churchill case.

"In dealing with exceptions (to his report), the conclusions of the Master, depending upon the weighing of conflicting testimony, have every reasonable presumption in their favor, and are not to be set aside or modified unless there *clearly* appears to have been error or mistake on his part."

Tilghman v. Proctor, 125 U. S., 131.

Citing—

Medsker v. Bonebrake, 108 U. S., 66.
Paddock v. Com. Ins. Co., 104 Mass., 521.
Richards v. Todd, 127 Mass., 167.

Believing that this appeal is prosecuted merely for delay, and that no error was committed by the Circuit Court, we respectfully ask that its decree be affirmed with proper damages.

Respectfully submitted,

DAN. W. JONES,
THOS. B. MARTIN,
Solicitors for Appellee.

Office Supreme Court U. S.
FILED.
NOV 26 1890
JAMES H. MCKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1890

No. 119.

JOHN D. BEARDSLEY, *Appellant,*

v.

PAUL F. BEARDSLEY, *Appellee.*

Appeal from the United States Circuit Court for the Eastern District of Arkansas.

Additional Brief for Appellee.

DAN. W. JONES,
THOS. B. MARTIN,
For Appellee.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1890

No. 119.

JOHN D. BEARDSLEY, *Appellant,*

v.

PAUL F. BEARDSLEY, *Appellee.*

Appeal from the United States Circuit Court for the Eastern District of Arkansas.

Additional Brief for Appellee.

As stated in our first brief, filed herein, we did not at that time have the brief of appellant, and, therefore, could only anticipate the argument of his counsel. Since then, we have been furnished a copy of it, and in reply thereto we submit that they argue the case from a false premise. They begin with the false proposition that the appellee's bill was filed to enforce the specific performance of a contract which they claim is evidenced by the written memorandum filed as an exhibit to the bill, and which is properly set out on the first page

of their brief, but not correctly copied on page 28 thereof. We have shown in the brief heretofore filed by us, and here repeat, that the contract, by virtue of which appellee became the owner of two-thirds of the stock and property purchased by appellant from Alderman, or its equivalent, one-third of the whole of the property and stock which appellant owned in the Washington and Hope Railway Company, was not based solely upon the writing exhibited, but upon a contract in parol between the parties made before the first day of January, 1882, the date the declaration of trust was executed and delivered to appellee.

Now, the writing, which is only a declaration of trust by appellant, is not made the sole basis of appellee's claim, and does not evidence the entire contract upon which his rights are founded, and the bill was not filed to enforce the specific performance of a contract evidenced solely by that writing. But it was filed to protect the rights of appellee under a contract made between the parties in parol, and to compel a trustee holding trust property, who disputes his fiduciary relation to the property, and who was so managing the same as to enure to his personal gain in violation of his trust, to account to the beneficiary.

Counsel for appellant do not contend that a parol contract of the character made between appellant and appellee is void because in contravention of the statute of frauds. If they did, it could avail them nothing. The only section of the Arkansas statute which could possibly have any bearing on the subject reads thus:

"No contract for the sale of goods, wares and merchan-
"dise, for the price of thirty dollars or upwards, shall be bind-
"ing on the parties unless, first, there be some note or memo-
"randum signed by the parties to be charged; or second, the
"purchaser shall accept a part of the goods so sold and
"actually receive the same; or third, shall give something in
"earnest to bind the bargain, or in part payment thereof."

Mansfield's Digest, sec. 3372.

The property sold was not "goods, wares and merchan-
"dise," and the Arkansas statute does not extend to contracts for the sale of goods, wares, merchandise or other *personal property*, or *things in action*, as in some of the States of the Union, viz.: California, Dakota, Nebraska, Nevada, New York, Minnesota, Montana, Utah, Wisconsin, Wyoming, Connecticut, Florida, Mississippi and Oregon.

Mr. Benjamin, in his excellent treatise on Sales, discussing the English statute says:

"The seventeenth section of the statute applies to contracts
"for the sale of 'goods, wares and merchandise.' * * *

"The statute therefore does not apply to shares, stocks, docu-
"ments of title, choses in action, and other incorporeal rights
"and property."

Benj. on Sales, sec. 111.

He refers to the case of a sale of shares in a banking company.

Humble v. Mitchell, 11 Ad. and *El., 205.*

And to a sale of stock of a foreign state.

Heseltine v. Siggers, 1 Ex., 856.

And says the statute does not apply to a sale of shares in a mining company.

Watson v. Spratly, 10 Ex., 222.

Powell v. Jessup, 18 C. B., 336.

Nor to a sale of railway shares.

Tempest v. Kilner, 3 C. B., 249.

Bowlby v. Bell, 3 C. B., 284.

Bradley v. Holdsworth, 3 M., and W., 422.

Bancroft v. Albrecht, 12 Sim., 189.

In New Hampshire promissory notes were held not to be goods, wares and merchandise within the meaning of the statute.

Whittimore v. Gibb, 24 N. H., 484.

In Indiana the statute omits the words "wares and mer-
"chandise," and extends only to sales of "goods;" but the same effect is given to the statute as though those words were included, and the English rule of construction prevails.

Vawter v. Griffin, 40 Ina., 593.

Also see—

Hudson v. Weir, 29 Ala., 294.

The appellant has not pleaded the statute of frauds in this case, which he must do before he can make it avail him, even if his contract came within its provisions, and a discussion of it is, perhaps, useless for that reason.

Given v. McCauley, 32 Ark., 97.

But if we go further, and treat the matter as if he had pleaded the statute, and, for the sake of argument, concede that the oral contract between the parties standing alone, would fall within its provisions, still it is taken out of the statute by the writing making the declaration of trust.

"The intent of the statute was to prevent the enforcement of
"parol contracts above a certain value, unless the defendant
"could be shown to have executed the alleged contract by
"partial performance, as manifested by part payment, or part
"acceptance, or unless his signature to *some* written *note* or
"*memorandum* of the bargain—not to the bargain itself—could
"be shown. The existence of the note or memorandum pre-
"supposes an antecedent contract by parol, of which the writ-
"ing is a note or memorandum."

Benj. on Sales, sec. 208,

Citing—

Townsend v. Horgrove, 118 Mass., 325.

Bird v. Munroe, 66 Me., 337.

In section 209 the author says:

"On this principle parol evidence is admissible for the "purpose of showing that the written page is not a note or "memorandum of the antecedent agreement, but *only a part* "*of it*, and the decisions are quite in accordance with this "view."

We think this doctrine is clearly announced by this court in *Barry v. Coombe, 1 Pet., 647.*

The written memorandum contains a description of the property, the price to be paid, and rather fully the terms of the contract in parol previously made by the parties.

"Any note or memorandum in writing which furnishes evi- "dence of a complete and practicable agreement, is sufficient "under the statute, and parol evidence is admissible to ex- "plain latent ambiguities and to apply the instrument to the "subject matter."

Williams v. Morris, 95 U. S., 456.

But counsel for appellant say the contract of purchase was executory and unilateral. And they base their argument for their contention in this matter upon the same false premise, *i. e.*, that the contract of purchase is evidenced alone by the written memorandum, or declaration of trust; whereas, as we have already shown, and as the Circuit Court found, the contract as originally made was in parol. The appellee in his deposition gives a very reasonable, truthful and natural statement of the causes which induced him to come to Washington, and of the circumstances leading to his purchase, and of the contract made between him and his brother. He says:

"I first came to this State in September, 1881. I came at "the request of John D. Beardsley, the defendant herein. He "met me at the City of St. Louis, Mo., by appointment, about "the middle of that month. He had written me to telegraph "him what day I would arrive there, and that he would meet "me there. I did telegraph him from the Town of Evanston, "in the Territory of Wyoming. He procured passes for me "from the City of St. Louis to the Town of Hope, Ark., and "return to St. Louis. He paid all my expenses from St. Louis "to Washington, Ark., and back to St. Louis. I demurred to "his paying my expenses, but he insisted, saying that he had "brought me down there to look over the property with the "hope that I could make arrangements to buy his partner's "half-interest in it and become interested in it with him.

"He expressed himself as having great faith in its success

"if we could work it out of debt and extend it. He said he "felt quite sure his partner would sell his interest for $10,000 "in ready money, and that he had repeatedly offered it to him "on a credit for $12,000. I had suffered very severe losses in "California from fires, depreciation of real estate, failures, and "unfortunate mining speculations, amounting to more than "$100,000, and I felt that his desire to have me associated with "him in this railway enterprise was sincere, and that he was "actuated by his brotherly affection for me—he being my "elder brother and seven years my senior—and that it was his "intention to assist me in some measure to retrieve some of my "losses.

"Acting on this belief, I went to the City of New York "with the view of selling some mining properties which had "been placed in my hands for sale upon a commission, the "consummation of which sales would have enabled me to buy "the interest of his partner in the railway. After spending "about a month in the City of New York, during which time I "was in constant correspondence with my brother about rail- "way negotiations, etc., etc., and failing to accomplish the sales "of the mining properties before spoken of, I returned to "Washington under an understanding that I would work for "the company for the sum of $75 per month until such time "as we could make some satisfactory agreement about an in- "terest in the railway, or, failing in that, until I could do better "in some other business.

"Immediately after my arrival in Washington, Ark., we "discussed the purchase of the Alderman interest. He stated "that Mr. Alderman was very anxious to dispose of his inter- "est to him for the sum of $12,000 upon a very liberal credit, "for the reason that his wife was not willing to come to Ark- "ansas to live, nor was she willing to have him to come here "to attend to the business without her; so, not being able to "give it his personal attention, he was determined to dispose "of it upon the best terms he could. Having no acquaintance "with Alderman myself, I then urged my brother to write to "him and purchase his one-half interest for the sum of $12,000 "upon a credit for my account, with the understanding that he "should apply all the profits of said interest to the payment of "the $12,000 except what might be necessary for the actual "living expenses of myself and family. To this he would not "fully agree, but said that he was going home to spend "Christmas with his family in West Virginia, and that he "would then purchase from Alderman his one-half interest "upon the best terms he could make with him as to price and "time, and that he would let me have two thirds ($\frac{2}{3}$) of said "interest upon the same terms and conditions which he should

"make with Alderman. This arrangement I agreed to, and it "was understood that it would be completed and go into effect "on January 1st, 1882.

"This agreement was made about November 10, 1881. "Considering this to be a permanent arrangement, I wrote my "wife, who, with my three children, was then residing in the "City of Washington, D. C., to make her arrangements to "come on to Washington, Ark., about December 1, and in "response to my letter she and my children did come, arriving "in Washington about November 30, 1881. A short time "after my agreement with my brother about the purchase of "Alderman's interest he received a letter from one J. W. Para- "more, of St. Louis, Mo., saying that Mr. Alderman had writ- "ten to him offering to sell him his one-half ($\frac{1}{2}$) interest in the "Washington and Hope Railway for the sum of $12,000, and "asking him (J. D. Beardsley) of what said interest consisted "and in what condition it then stood.

"He consulted with me immediately upon the receipt of "this letter, and we agreed that he should at once write to Al- "derman and accept his proposition to sell him (J. D. Beards- "ley) his one-half ($\frac{1}{2}$) interest in said railway for the sum of "$12,000 upon a credit, and that I should have two-thirds ($\frac{2}{3}$) "of said Alderman's interest, equal to one-third of the whole, "for the sum of $8000, upon the same terms as he should "agree upon with Alderman. He immediately wrote to Al- "derman that he would accept his proposition to sell his inter- "est for $12,000, and that he would go home about Christmas "and agree with him about terms of payment, etc. By return "of mail he received a reply from Alderman, saying that his "letter had been received, and that he considered his interest "in said railway sold to him for the sum of $12,000. This, as "near as I can state, was about November 15, 1881. We had "talked this purchase over between ourselves previous to the "receipt of Mr. Paramore's letter, and it was agreed that all "the net profits of my one-third interest should be applied "towards the payment of the $8000, saving only what might "be required for my necessary living expenses. I stated to "him that I held a note against a party in California, which, "with interest, amounted to over $1200, and that this party "owned property in Europe which was very valuable, and that "he was then in Europe negotiating a sale of his property, and "that I hoped upon his return to be able to collect the amount "of said note, and if I did collect it I would pay it on account "of said $8000. I never stated to him at any time after com- "ing to Arkansas that I owned a valuable gold mine, or that I "had any other assets whatever that could be made available "in paying any portion of the $8000 other than the note above

"referred to. I believe that my brother, at the time the Al-
"derman purchase was made, understood my financial condi-
"tion as fully and as well as I did myself. I kept nothing
"secret from him, but, on the contrary, my large losses in
"California were the subject of frequent conversations between
"us.

"After our agreement regarding the purchase was made, in
"November, 1881, I went regularly upon the trains as conduc-
"tor; also taking entire charge of the operating department of
"the road. Everything went on quietly and satisfactorily, and
"in my brother's absence, which was quite frequent, the entire
"business of the road was under my control, and all the em-
"ployes took their orders from me. About the 2d or 3d of
"January, 1882, my brother, without solicitation or request,
"handed me an envelope marked, 'Stock memorandum,' and
"which contained the original stock memorandum, a true copy
"of which is set forth in the complaint in this cause, saying,
"'Here is a memorandum of our agreement, which you had
"better take and put away, for if anything should happen to
"me you would have nothing to show your interest in the
"road.' Being quite busy at the time I put the envelope in
"my pocket, and after going home that night examined it, find-
"ing that it corresponded with our agreement previously made,
"with the exception of a slight deficiency in the par value of
"the shares and an excess in the number of shares as expressed
"therein, but, believing this to be a clerical error and knowing
"we both understood the interest referred to as a full one-third
"($\frac{1}{3}$), neither more nor less, I did not consider it necessary to
"call his attention to the error, but gave the memorandum to
"my wife for safe-keeping, and it has ever since been in my
"possession." Record, pp. 75, 76, 77, 78.

Appellant in his letter of February 7, 1886, to appellee, written before the commencement of this suit, says (page 89 of Record):

"*After I had purchased this interest you importuned me to let*
"*you have it. This I declined to do, but I finally consented to*
"*let you have two-thirds of the purchase, you to pay me $8000*
"*with interest from the time of my purchase and at the same rate*
"*I paid Mr. Alderman, stock to remain in my hands until paid*
"*for. * * * Some time afterward, knowing that, as our*
"*understanding was purely verbal, you would have no rights*
"*whatever in case of my death, I made a written memorandum*
"*showing that you were entitled to one-third of the stock then*
"*standing in my name or $33,333, subject, however, to a*
"*payment of $8000, with interest as aforesaid. This memo-*
"*randum I gave you, and I presume you still have it.*" Can language be stronger or more explicit, to show an *absolute*

sale upon credit? And to emphasize the fact that this was his own construction of the transaction, he adds, immediately following the above: "*Here the business part of our transaction,* "*so far as interest in the property is concerned, rests.*"

From the foregoing evidence we think there can be no doubt that prior to January 1, 1882, the parties had by verbal contract passed the title of the stock from the one to the other, and it can make no difference to appellee whether the court shall consider the date as early as November, 1881, as per his contention, or as late as December 31, 1881, as per the last contention of appellant, for in either case, the contract was made prior to January 1, 1882. So far as the contract of sale was concerned there was nothing more for either party to do by the very terms of the contract to complete it, and it was therefore an executed one. It was, as we have shown here, and in our former brief, a sale on credit; unlike the agreement in the *Elgee Cotton cases, 22 Wall.*, cited by appellant.

In that case the court says: "It is, doubtless, true that "whether the property passes or not is dependent upon the in- "tention of the parties to the contract, and that intention must "be gathered from the language of the instrument." In this case the contract was not evidenced entirely by the writing (instrument), and applying the doctrine above announced the intention must be gathered from the language of the contract, as shown by the evidence in the cause.

The court further says: "This is not the case of an un- "conditional sale of a specific chattel for an ascertained price. "Its subject was the crop of cotton, then lying in Wilkes "County. The contract was a cash contract. No credit was "intended." What application can that case have to the one under consideration here?

This is the case of an unconditional sale of a specific chattel for the ascertained price of $8000 with interest until paid for.

The contract was *not* a cash contract. A credit *was* intended.

In the case of *French v. Hay, 23 Wall., 232*, the court says the two instruments taken together show there was no intention to convey the stock until the price was paid. Hence there was no sale on a credit intended by the parties there, and it is therefore unlike this one. It was not the intention of the parties to pass the property in the chattel there until the price agreed upon was paid; and the contract shows it. Here the contract shows the reverse of the proposition.

Joyce v. Adams, 8 N. Y., 291.
Kelly v. Upton, 5 Dunn., 336, and
Dukes v. Furnis, 3 Dunn., 292,

cited by counsel for appellant, were all intended by the parties as cash contracts, and the courts trying them so found. So they have no application to the case under consideration.

The case of *Lester v. Jewett*, 1 *Ken.*, 454, only declares that where by the *terms of the contract* delivery and payment are to be concurrent acts, the promises are dependent, and one party, at law, cannot make the other perform the contract without a performance on his part, or a legal offer to perform.

That is true, but where is the evidence to show in this case any contract by which payment and delivery were to be simultaneous, and that no property was to pass until payment.

The learned counsel after citing these cases seem to realize that they are not applicable to the case, and that they have argued from a false premise; towit, that the contract is evidenced by the writing alone; for they then abandon the writing, and resort to garbled extracts from the evidence to sustain their contention of no property rights passing by the contract on account of what they claim is its executory character. The appellant in his answer, says:

"*Defendant did not wish to sell him the stock, or believe that* "*he would be able to pay for the same, but finally, upon his ur-* "*gent solicitations, consented to sell him thirty-three thousand two* "*hundred and fifty dollars of said stock for the sum of eight thou-* "*sand dollars, and inasmuch as he was paying interest on his pur-* "*chase of stock from the said Alderman and was realizing no* "*dividends thereon, he thought it but just that complainant* "*should pay him interest from the date of said purchase, and so* "*stipulated. It was further agreed that the stock was not to be* "*delivered to complainant until he should have paid therefor,* "*On the day after he had agreed to make said sale, defendant* "*wrote and delivered to complainant the memorandum copied in* "*his bill.*" And then, as if to put the question as to the nature and character of the transaction beyond the peradventure of a doubt, he adds: "*Said sale*"—not *agreement* to sell, as counsel contends—"*was not made in pursuance of any previous* "*agreement or any other circumstances, or with any other under-* "*standing than herein stated.*"

Surely, subsequent *explanations* of the transaction by appellant in his deposition, in which he seeks, *arguendo*, to take away the force and effect of the foregoing solemn admissions (his answer being under oath, notwithstanding the waiver in the bill) cannot have such force or effect, or change a simple sale of personal property upon credit into a conditional sale, or an absolute sale into a mere agreement to sell. Moreover, the memorandum itself, which was executed by appellant and given to appellee as evidence of the sale, cannot be tortured into evidence of a mere conditional sale, or a mere agreement

to sell, as the astute and ingenious counsel for appellant have sought to do.

The acts and declarations of appellant prior to the commencement of this suit (as disclosed by the record) show conclusively that his construction of this transaction was as appellee contends, and as the Circuit Court decides. For instance:

1st. In organizing the Arkansas and Indian Territory and the Arkansas and Louisiana Railway Companies, in September, 1882, appellant subscribed for himself 400 shares, and for appellee 200 shares, in each of said corporations.

See pages 25 and 27 of Record.

2d. The fixing of salaries by him at $200 per month for himself and of $100 per month for appellee; and his instructions to Carruth, the treasurer of the corporation, about December, 1883, to enter up the same at the end of each month to appellant's and appellee's accounts as salaries, while all other salaries were paid on pay-rolls or vouchers.

See Carruth's deposition, page 92 of Record.

3d. The payment of one-third to appellee and of two-thirds to himself of the profits of handling cotton seed in the season of 1884 and 1885, upon vouchers approved by himself and certified by his auditor.

See Carruth's deposition, same page.

4th. Appellant's declarations to Carruth, Yowell, Rector and Bell, at different times, that he had *sold* appellee one-third interest in the property, as mentioned in appellee's former brief herein, at pages 39 and 40.

5th. Other facts argued in former brief.

Appellant's *explanation* of this cotton seed transaction (in his deposition at page 150 of the record) may be ingenious, but it certainly is not convincing to even the ordinary mind. He "thought of Mr. Paul F. Beardsley, and thought it would "be a nice thing to give him a part!"

Strange that in this, as in fixing salaries, his *thoughts* should run in exact parallel lines with his own and appellee's respective interests in the property!

His further *explanation* (in his deposition at page 152 of record) of his declarations to Yowell, Rector and Bell that he had *sold* appellee an interest in the property, "if reference was "ever made to anything of the kind" (as he says), and his statement that "all three of these men are personal enemies "of mine," are equally unsatisfactory. Carruth, who is shown throughout the record, to have been his very confidential friend and adviser, fully corroborates the three "personal "enemies." And, inasmuch as counsel have gone out of the record to establish the good character of some of appellant's

witnesses, we might with equal truth and propriety, and with perfect confidence, challenge all attempts to impeach the uprightness, integrity and truthfulness of these three enemies (as he styles them) of appellant. In any event however, the record fails to show any attempt at all by appellant in that direction.

Counsel for appellant (in their brief, page 34,) quote the *explanation* given by appellant in his deposition at page 136 of the record, in regard to the sale to appellee, to show the intention of the parties at the time of the transaction, and say that "the appellee does not contradict this statement or testify "in regard to the intention and understanding between them "as to the time the stock was to be transferred or delivered." As to this, we respectfully submit, appellee gave a simple, straight-forward and consistent statement of the whole transaction in his deposition hereinbefore upon that point cited at length; while appellant has given a different and contradictory statement each time he has spoken of the matter. In his letter to appellee, of February 7, 1886, hereinbefore cited, he admits an absolute sale of the stock upon credit. And in that letter he says that, "*Sometime afterwards, knowing that, "as our understanding was purely verbal, you would have "no rights whatever in case of my death, I made a written "memorandum,*" *etc.* This statement is in exact accord with appellee's statement of the transaction (in his deposition, page 78 of the record), which is as follows: "About "the 2d or 3d of January, 1882, my brother, without solicita- "tion or request, handed me an envelope marked 'Stock mem- "'orandum,' and which contained the original stock memoran- "dum, a true copy of which is set forth in the complaint in this "cause, saying, '*Here is a memorandum of our agreement, which "'you had better take and put away, for if anything should "'happen to me you would have nothing to show your interest in "'the road.*'"

But, in his answer (page 41 of record), appellant, while again admitting the sale of the stock to appellee upon the same terms as those stated in said letter, says that appellee began to importune him to sell him a part of the Alderman stock.

"*Representing that he still had interests in California from "which he expected to realize money with which he could pay "for the same;*" and he adds: "*Defendant did not wish to sell "him the stock or believe that he would be able to pay for the "same, but finanlly, upon his urgent solicitations, consented to "sell,*" etc.

Again, in his affidavit, at page 123 of the record, he gave still another version of the transaction. He again speaks of appellee's importunities, and of the gold mine, and adds:

*"I had explained fully in my conversation to Mr. Paul "Beardsley, that the material, iron, locomotive, etc., got in "Tennessee had not been settled for and was my personal prop- "erty. * * * There was no proposition or understanding "that this was anything more than an agreement to sell so much "stock for delivery when the money should be paid. There was "no connection whatever between this sale to Mr. Paul Beards- "ley and my purchase from Mr. Alderman. * * * I gave "Mr. Paul Beardsley the memorandum, a copy of which he files "in his complaint. I gave it to him either next day after the "conversation in which I told him I would sell him the stock, "or at latest the second day after it. * * * At the time the "sale was made I did not regard the transaction as of much con- "sequence, because I had not much faith in Mr. Paul "Beardsley's realizing much from a mine which he had left in "California."*

[We deem it proper here to say to the court that the *affidavit* from which the foregoing extract is taken, which appears in the printed record on pages 120–128, was *ex parte*, without notice to appellee, and was only used by appellant upon the hearing of appellee's motion in the Circuit Court for a receiver. It was never used as a deposition, or otherwise, at the hearing. It was not filed until August 20, 1886—same day of entering the decree (as appears by the Clerk's indorsement, page 128), and is improperly here. We have not taken the usual course for a diminution of the record, because we have deemed it unworthy of the costs and trouble incident to such proceedings. Moreover, it is, in so many respects, contradictory of and inconsistent with the appellant's answer and his deposition taken at a later date, that we are willing that it should come to the attention of this court, inasmuch as it is here through no fault of appellee or his counsel.]

Again, in his deposition, at page 133 of the record, he says: *"Mr. Paul Beardsley had been importuning me to sell him some "of the stock from a time beginning soon after his arrival. He "said he had no money, but represented that he had left a valua- "ble mine and machinery in California which he was negotiat- "ing to sell, and which would realize a good deal of money. "He proposed to pay from this source for any stock I would let "him have. * * * From what he told me about the proba- "bility of selling the mine I did not expect it* (the transaction) *"to stand open long. * * * I gave it* (the memorandum) *"to him the next day after I had agreed to sell him the stock. "* * * I gave him the memorandum because, in thinking "of the matter that night, it occurred to me that there might "come up some questions afterwards about the time from which "the interest was to run or the exact amount of stock I had*

"*agreed to let him have for the money. The memorandum was* "*made by me without any request from him. He did not ask for* "*any writing.* * * * *The principal idea was to fix the date* "*of the interest and the amount of stock, but I intended it to show* "*that I had agreed to sell him $33,250 face value of the stock,* "*to be delivered only when he should pay for it.*"

And again, in the same deposition, at page 136 of the record, he gave still another version of the matter. He says: "*I regarded the transaction as a conditional sale of so much* "*stock to be delivered and the title to pass only when paid for.* "*As he had given me no contract, I did not consider that I could* "*compel him to take the stock and pay for it, even if he had the* "*the money. I did not even have a copy of the memorandum* "*which he held.*"

And still another version appears in the same deposition, at page 141 of the record, where he says: "*At the time it was* "*made I regarded it purly as a stock transaction.*" And again, on same page, he says: "*I understood it to be virtually* "*giving him an option on that much stock.*" We have cited these extracts from appellant's different statements, made, it seems to us, at dates and under circumstances which indicated to him that the changes might be beneficial to him in this litigation, simply to show his inconsistency and either his want of memory or his disregard of truth.

While upon this subject, with an apology to the court and begging its indulgence, we deem it not inappropriate to direct its attention to a few more of the many other instances in which appellant either contradicts his own statements or those of his own witnesses, concerning matters which he seemed to consider material. For instance, at page 128 of record, he says: "Of the amount paid Vinton Alderman not one dollar "was paid directly or indirectly by the Washington and Hope "Railway Company, or by either of the successive companies." Then, in his answer at page 44, record, he says: "It is true "respondent has paid the said Alderman about the sum of "$5500 of said indebtedness. Said payments were not made "out of the earnings of the road, except about $2900, which "has been paid out of the earnings since said road has been "held by him as lessee, and respondent has never doubted his "right to so apply said earnings."

Wheless, the auditor of the railway company and the confidential friend and advisor of appellant, on pages 202 *et seq.*, record, answers questions thus:

"Q. I will ask you to turn to the account of Vinton "Alderman on your books. What is the amount of credits "given him, the date, and for what purposes, as shown by the "original entry?

"A. $12,000, for assumption of balance due him to date, "January 1, 1882.

"Q. Do you know anything of the nature of that busi- "ness?

"A. It was for his interest in the road. I only know from "what Major Beardsley told me. I mean the Arkansas and "Louisiana railway.

"Q. From conversations with Major Beardsley in regard "to the matter, was it for the entire balance due Vinton "Alderman for his interest in the Washington and Hope rail- "road?

"A. I inferred so.

"Q. Now, what is the amount of his debits, and from "what date do they extend?

"A. From December 25, 1882, to March 20, 1886, aggre- "gating $5500; and this shows due him June 26, 1886, $6500.

"Q. Are the debits on the book payments on the account?

"A. Yes, sir; payments on the account.

"Q. From what source were these payments made?

"A. Most of it was paid from money taken in by the "road as managed by J. D. Beardsley, lessee. Some of it "was paid from money Major Beardsley borrowed from his wife; "$200 was paid by Major Beardsley from the proceeds of a "stave machine sold by Alderman; $800 was paid from money "borrowed by Major Beardsley from his wife, which money "was put into the general fund and vouchers for Alderman "drawn against it. Had it not been for this money borrowed "the condition of the road would not have permitted these "payments to have been made.

"Q. When Major Beardsley borrowed the money from "his wife, which you have just mentioned as going into the "general fund of the road, was she not given credit on the "books for this amount, and has she not been paid back out "of the funds of the road?

"A. She was, and she has been paid back out of the same "funds the other payments were made.

"Q. Was not J. D. Beardsley credited on the books with "the proceeds of the stave machine sold by Alderman?

"A. He was.

"Q. Does it not result, then, that the payments made to "Alderman were made out of the earnings of the railroad?

"A. As managed by J. D. Beardsley, lessee, yes."

Again, at page 143 of record, appellant says that there was no dictation at all by him to the board of directors in making the construction contract, and that there was no solicitation or influence used by him over said board; whereas, Carruth (at page 92), Hart (at pages 108–9), Williams (at pages 225–6),

say that he controlled the directory; and counsel in their brief (at page 58 thereof) say: "It must be admitted that the "corporation was in the power and control of the appellant."

In appellant's brief (page 47) it is said that there is no evidence that the appellant did not have the means to pay Alderman. In his own deposition (at page 131 of the record), when giving his reasons for not sooner buying Alderman's interest, he says that he did not consider it at all previous to the day he made the purchase, "because the earnings of the road were "very small, and its ability to sustain itself was not clear. "I had put *most of what I had* in it, and I did not want to get "in any dee er until I saw a better prospect."

An ! Carruth (in his deposition at page 218 of the record), says:

"The rails and ties of the Washington and Hope Railroad "were most of them in bad condition in 1882. It was so in the "beginning of the year and they got worse as they were worn. "It frequently took all day or more to make one trip of ten "miles and back. The Washington and Hope Railroad Com- "pany, for an institution of its size and property, was consider- "ably in debt. It was incumbered. It was not able to pay its "debts and hold its property. The Washington and Hope "Railroad was not self-supporting. The superintendent's "salary was not paid for want of funds. There was not suffi- "cient earnings to make the necessary repairs on the road. "I remember a very bad washout in May, 1882; the company "did not have the means to repair it. Major Beardsley came "to me several times and wanted my firm to advance the "money. It would take $1500, and I did not feel safe to ad- "vance that money. I afterwards did lend him a smaller "sum, I think $400. He fixed it up so that he could run "with that."

So, we say, under such circumstances, it would not be reasonable to even suppose that appellant was able to pay Alderman for his stock, unless it could be made out of the earnings of the road, and it was very reasonable and natural that he should want the assistance, skill and co-operati n of his brother, the appellee, in a joint effort to get the property out of these embarrassments, and make it not only self-sustaining, but valuable. And the result shows his wisdom in making appellee a party in interest.

The court will not be misled by the statement of counsel (page 69, appellant's brief,) that the witnesses, Carruth, Williams and Wheless, were introduced by appellee when they were testifying as to their want of knowledge of appellee having an interest in the road and construction contract. By reference to the evidence of these witnesses in the record, it

will be seen that the statements cited by counsel for appellant were not only drawn out upon cross-examination, but that appellee objected to the testimony because of the fact that it was entirely new matter and not responsive to the examination in chief, and because of the incompetency of such testimony.

The second point argued by appellant is that the contract is unilateral—lacks mutuality—and this is argued from the same false premise of the evidence of the contract subsisting alone in the declaration of trust.

The case of *Dorsey v. Packwood, 12 Howard, 137*, is very different from this in several respects 1. There the contract on its face showed no obligation on the part of Dorsey to pay anything; here appellee bound himself in an oral contract, which we have already shown to be binding and enforceable in this State, to pay $8000. 2. There Dorsey contributed nothing; here appellee contributed valuable services and peculiar skill in the making, improving and extending the property. 3. There, Dorsey, by a writing dated 1836, relinquished any claim he might have had, and waited twenty-seven years before attempting to assert any claim or right in the property, and was guilty of other conduct showing laches on his part; and Packwood never by word, act or writing declared himself a trustee holding for him. Here, appellee has never by word, act or writing relinquished any claim he had; has been guilty of no laches, and has always acknowledged his personal liability for the $8000, less the amounts paid by his part of the earnings of the road which had been applied to the Alderman debt. And just here we call the court's attention to the fact that by the finding of the Circuit Court, based upon the report of the master, Paul Beardsley has actually paid on the purchase several thousand dollars.

In the case of *Jones v. Noble, 3 Bush., 446*, the contract was evidenced entirely by the writing, and *on its face*, shows no mutuality.

The same is true of all the cases cited by appellant on this subject; that is, the contracts themselves show a lack of mutuality.

The contract here has as much of the element of mutuality in it as any contract for the purchase of personal property on a credit can have.

Both parties are bound by its terms, and either could enforce it. They agreed as to the amount of the stock, the character of the stock, and the amount to be paid for it.

The stock was not then delivered for the reasons we have already shown, but the property in it passed, at least, an equitable title, and appellee was bound on this promise to

pay for it not only the $8000, bnt the interest stipulated. The mistake of counsel for appellant in this matter seems to us to be their contention that before any property rights to the property sold could pass, there must be a delivery of the specific article. This is not the law. "The "property, or right of ownership, vests at once in the buyer as "soon as the bargain is struck by the *aggregatio mentium*, "although nothing may have been said about payment or "delivery."

Schouler, Pers. Prop., vol. 2, p. 230, and authorities cited in our former brief.

The contention by appellant that this suit is not maintainable because "it is a contract for the sale of stocks, and that "equity will not entertain jurisdiction for the enforcement of "the specific execution of such contracts" cannot be maintained.

In the first place this is not a suit for the enforcement of an *executory* contract for any purpose. The suit is not to vest a right; but to protect one already vested by the contract of purchase. Moreover, the principal and controlling purpose of the suit is to get rid of a trustee who denies his trust, and to make him properly account as such fiduciary.

There is nothing, we apprehend, better settled in equity jurisprudence, than that, when a court of equity takes jurisdiction of a cause for one purpose it will settle *all* rights of the litigants. On this we deem a citation of authorities unnecessary.

The cases of *Ross v. Union Pac. Rwy., Wool., 26; Frue v. Houghten, 6 Col., 308; Pierce v. Plumb, 74, Ill., 326*, and *Barton v. DeWolf, 108 Ill., 195*, only declare the familiar principle that where there is an adequate remedy at law, resort cannot be had to equity. But what remedy at law could appellee have applied to make the trustee account; to follow the proceeds of his stock with its increased value into the new corporations shown in the record, and finally into the Arkansas and Louisiana Railway with its extension; and to his rights under the construction contract of May 22, 1883?

The construction contract was made in the name of appellant, for himself and as trustee for appellee. Could a court of law enforce appellee's rights under all the circumstances shown in this bill? Certainly not.

But if it was a suit simply for specific performance, some of the authorities say it could be maintained. Judge Schouler says: "Specific performance is thus an equitable remedy to which "the buyer has been allowed to resort, when the subject matter "of sale was an incorporeal chattel, such as shares of stock."

Schouler's Pers. Prop., Vol. 2, p. 605.

We have argued in our former brief that this suit as one to enforce a trust will lie, and deem any further argument unnec-

essary. And have also argued the sufficiency of the evidence to establish a trust. Appellant contends that the burden of proof is upon the appellee, to prove the trust and other material allegations of the bill. We concede this to be true, and answer that the burden is fully discharged by the evidence of appellee, the records introduced, the admissions of appellant, in his answer, his letter, and the writing he voluntarily executed and delivered to appellee.

See p. 46 of our former brief.

Touching the means by which the road was extended to Nashville, appellant, in his brief (page 82), says: "But it was "contended by the appellee's counsel, and held by the court "below, that the road was extended to Nashville by the use "of its earnings and by borrowing on its credit, and that "appellee was, for that reason, entitled to participate in its "benefits. It is not true that the earnings were used for that "purpose, from the simple fact that the road produced no net "earnings to be used." And to support this statement, he refers to the testimony of Carruth at page 218 of the record, and to pages 137 and 138, embracing the testimony of appellant himself. An examination of that evidence will disclose the fact that the witnesses were talking of its physical and financial condition in 1880, 1881, and the early part of 1882, and not about its condition near the date the improvements were made and extension begun. It is astonishing that learned counsel for appellant should be so reckless as to say that "the road produced no net earnings to be used," when it is shown by their favorite witness (barring the appellant himself), Wheless, the auditor of the road, that the net earnings for the last three months of 1883, were $5,115.37; for 1884, $24,813 52; for 1885, $34,429.88 (see record, page 205); and from statements furnished to Poor's Manual by the appellant, the net earnings were as follows:

For 1882, $6,065 92.
For 1883, $8,000.00.
For 1884, $24,823.88.
For 1885, $34,429 85.
See record, page 84.

It is exceedingly strange that counsel should claim, in the face of the record, that the "bonus notes" and the "old ma- "terial" belonged to appellant and that he was entitled to the proceeds of them for his individual account. The record clearly shows that these bonus notes were given by certain citizens of Hempstead County as part consideration for the building of the road by appellant and Alderman, and that the proceeds of them went into the construction of the road. Appellant, in his answer (page 45, record), says: "The

"alleged bonus notes of six thousand dollars were a part of the "consideration enuring to respondent under his contract to con- "struct said road. Said notes had been endorsed and nego- "tiated for the purchase of material that entered into the con- "struction of said road, and part of them had been paid when "complainant came to Washington." And immediately following this statement, he says: "The sum realized from the "sale of said cars, spikes, bolts and other material," (which is the "old material") " * * * * was in part paid to "the St. Louis Bolt and Iron Company for the purchase "money of said material." These facts being true, if the appellant's contention that he is still entitled to the proceeds of said notes and material is sustained, he would be paid twice upon the same account—first for constructing the road and, second, for the money and materials necessarily used by him for that purpose. In other words, he was paid by the citizens for doing the work and furnishing the materials under his contract, and now contends that the corporation owes him for the same thing.

There can be no necessity for inquiring into the sources from which these notes and material came, or the value of them, or of the proceeds derived from them; because appellant (at page 130, record), and Alderman (at pages 260 and 263) both say that the purchase by appellant of Alderman's stock for the sum of $12,000 on a credit settled and adjusted all matters of account between them; and the stock, being the representative of all values in the properties of the Washington and Hope Railway, no one, after that purchase, could have owed appellant anything on account of these matters; and he sold the stock to appellee after his purchase from Alderman.

We scarcely deem it necessary to urge that the testimony of the several employes of the railway company, to the effect that they did not know that appellee had any interest in said company, was not only incompetent, but is of that negative character which proves nothing. They did not know that the declaration of trust had been executed, or that there had ever been any talk even between appellant and appellee about the purchase; but their want of knowledge of these facts is not astonishing and proves nothing; for, as prudent and discreet men of business, the owners of the property would not feel called upon to go around telling their subordinates of their transactions and, especially, when the larger shareholder seemed anxious to conceal the fact for the purpose of enabling him, should litigation arise, to remove it to the federal courts by virtue of his alienage.

Nor do we deem it necessary to lengthen this brief for the purpose of showing that the charges made by appellant's

counsel, in their brief, that appellee has been guilty of contradictions and inconsistencies in his pleadings and testimony, are without foundation; but we simply ask a careful examination of the record, and upon that we feel confident of an affirmance of the decree of the Circuit Court.

Respectfully submitted,

DAN W. JONES,
THOMAS B. MARTIN,
For Appellee.